

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

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

**INTERIM RECEIVER'S SECOND REPORT TO THE COURT**

**January 7, 2014**

**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 INSOVLENCY 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**

**SECOND REPORT TO THE COURT  
SUBMITTED BY PRICEWATERHOUSECOOPERS INC.  
IN ITS CAPACITY AS INTERIM RECEIVER AND RECEIVER**

**INTRODUCTION**

1. By Order (the “**Appointment Order**”) of Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 13, 2013 (the “**Date of Appointment**”), pursuant to section 47 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**”), PricewaterhouseCoopers Inc. was appointed as interim receiver and receiver (in both capacities referred to as the “**Interim Receiver**”) of all of the assets, undertakings and properties of SHS Services Management Inc. / Gestion des Services SHS Inc. (“**SHS**”) and SHS Services Limited Partnership (“**SHS LP**,” and collectively with SHS, the “**Company**”) acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof (the “**Property**”). The Interim Receiver’s appointment pursuant to section 47 of the BIA was made until January 11, 2014. These proceedings shall be referred to herein as the “**Interim Receivership Proceedings**”.
2. The application for the Appointment Order was brought by the Company. The Company’s principal secured creditors are Sears Canada Inc. (“**Sears**”) and Alaris Income Growth Fund Partnership (“**Alaris**”), pursuant to the terms of a loan agreement with SHS.
3. On December 23, 2013, the Court made an order (the “**Amended and Restated**”).

**Order**") amending and replacing the Appointment Order. The Amended and Restated Order provided, among other things, that Sears may exercise its right to terminate the Concession Agreement (as defined in the Amended and Restated Order) on notice to or consent of the Interim Receiver, or on further order of the Court. The Interim Receiver notes that, as of the date of this report, Sears has not provided notice of termination of the Concession Agreement to the Interim Receiver.

4. The Interim Receiver made its first report to the Court on December 20, 2013 (the "**First Report**"), which is attached (without appendices) as Appendix "A". The purpose of this report (the "**Second Report**") is to provide an update to the Court on:
  - a) The Interim Receiver's activities since the First Report;
  - b) The relief sought in the hearing scheduled for January 9, 2014 (the "**January 9 Hearing**"), including for an order (the "**Receivership Order**"):
    - i) Continuing the Interim Receivership Proceedings as Receivership Proceedings under section 243 of the BIA;
    - ii) Approving the activities of the Interim Receiver as set out in the First and Second Reports; and
    - iii) Approving a sales process for the Company's rental portfolio assets (the "**Rental Portfolio Sales Process**"); and
  - c) The anticipated actions to be taken after the January 9 Hearing.

## **TERMS OF REFERENCE**

5. In preparing this report and conducting its analysis, the Interim Receiver has obtained and relied upon certain unaudited, draft and/or internal financial information of the Company, the Company's books and records, and discussions with various parties including former SHS employees retained on an interim basis by the Interim Receiver (collectively, the "**Information**").
6. Except as otherwise described in this report:

- a) The Interim Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook;
  - b) The Receiver has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
7. Future oriented financial information referred to in this report is based on estimates and assumptions. Actual results may vary from forecast, even if the assumptions materialize, and such variations may be significant.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars and exclude harmonized sales tax (“HST”). Capitalized terms not otherwise defined are as defined in the Appointment Order.

#### **ACTIVITIES OF THE INTERIM RECEIVER**

9. Since the time of the First Report, the Interim Receiver has completed several activities pursuant to its duties and powers as set out in the Appointment Order. The activities have been primarily focused on the following:
- a) Reviewing the Company’s outstanding work orders to determine which are to be completed, pursuing a support agreement with Sears regarding same, and assisting the Company in its resumption of limited operations;
  - b) Forecasting the cash flow requirements of the Interim Receivership Proceedings and any subsequent proceedings after the January 9 Hearing, and arranging funding for same;
  - c) Reviewing certain cash receipts and payments which occurred in the week prior to the Date of Appointment;
  - d) Reviewing certain creditor claims received to date by the Interim Receiver and its counsel; and

- e) Working with counsel for Sears on the plans for the January 9 Hearing, including seeking the appointment of PricewaterhouseCoopers Inc. as receiver of the Company under section 243 of the BIA and developing the Rental Portfolio Sales Process.
10. The Interim Receiver has also performed other activities incidental to its duties and powers under the Appointment Order and the BIA, together with other operational and statutory requirements, including the following:
- a) Reviewing and reconciling accounting information provided by the Company, and assistance with cut-off of pre- and post-Date of Appointment accounting in the Company's financial records;
  - b) Arranging alternative insurance coverage for SHS and the Interim Receiver, as the Company's existing policy expires on January 11, 2014 and the existing insurer is unwilling to extend coverage after that date;
  - c) Corresponding with SHS's various landlords regarding occupancy of SHS's leased premises, and communicating with SHS's utility and service providers regarding post-appointment services;
  - d) Communications with Canada Revenue Agency and the various provincial tax offices regarding completion of SHS's harmonized sales tax returns and provincial sales tax returns up to December 13, 2013 and making arrangements with respect to post-appointment tax returns, as required;
  - e) Completing records of employment for SHS's former employees;
  - f) Working on the Interim Receiver's communication strategy and updating and posting frequently asked questions and answers on the Interim Receiver's website to provide information to customers, former employees, installers, contractors, third party licensees and various other interested parties;
  - g) Safeguarding the Company's inventory and other assets at its rented warehouses across Canada;
  - h) Liaising with Sears to assist in managing information requests from former SHS

customers seeking service and warranty work, which Sears is performing as described below;

- i) Numerous discussions with parties expressing an interest in acquiring some or all of the Company's assets and operations;
  - j) Communicating with Sears and Alaris and their counsel regarding the status of the Interim Receivership Proceedings.
11. The Interim Receiver has established a website ([www.pwc.com/car-shs](http://www.pwc.com/car-shs)) for creditors, customers and other stakeholders to obtain further information on the Interim Receivership Proceedings. As of January 2, 2014 the website had received over 5,300 visits. The Company's call center (1-800-469-4663) has responded to over 11,600 calls with information on the Interim Receivership Proceedings to December 31, 2013. The Interim Receiver's phone hotline (1-855-376-8474) has received over 2,000 calls, and its email address ([shs.questions@ca.pwc.com](mailto:shs.questions@ca.pwc.com)) has received over 500 emails. These are being responded to by the Interim Receiver and former SHS staff retained by the Interim Receiver as quickly as possible.

#### **LIMITED RESUMPTION OF OPERATIONS AND BACKSTOP AGREEMENT WITH SEARS**

12. The Interim Receiver has worked with SHS on the limited resumption by SHS of its business activities, with the support of Sears to mitigate the potential financial loss to the estate from doing so.
13. The products and services that SHS performed included a range of interior and exterior home renovations, repairs, and other home maintenance services, in addition to the sale of air conditioners, furnaces, fireplaces, and interior and exterior renovation-related products, as well as installation and assembly of products purchased at Sears retail outlets (collectively the "**Services**").
14. SHS acquired the assets to perform the Services under the terms of an Asset Transfer Agreement dated December 20, 2012 (the "**ATA**"), and the provision of the Services was governed by the terms of a Branded Concession Agreement between Sears and SHS dated December 20, 2012 (the "**BCA**"). The Services were sold by employees of the Company, primarily at Sears locations and from visits to customer sites. Product used or installed as

part of the Services was also ordered by employees of the Company. The performance of the Services, including installation of purchased products, was done by independent contractors engaged by SHS.

15. Certain Services, including carpet/upholstery and duct cleaning services (collectively “**PSP Jobs**”) were performed by licensees (the “**Licensees**”) pursuant to the terms of a license agreement that was assigned to SHS by Sears as part of the ATA. Sears has informed the Interim Receiver that it gave notice of the assignment of the license agreements to the affected licenses substantially in the form of notice attached as Appendix “**B**”. SHS manages a portion of the generation of leads for new PSP Jobs as well as the processing of payments for this work, and receives a portion of the revenue generated by PSP Jobs depending on the nature of the work performed.
16. In the First Report, the Interim Receiver advised that it was reviewing orders for Services that were received by SHS prior to the Date of Appointment and which have not yet resulted in installations or other work performed in customer homes (the “**Existing Orders**”) to determine whether and how they could be completed, and on what terms they may be completed.
17. An initial review of the Existing Orders was completed on December 20, 2013. This identified a material number of Existing Orders that were expected to generate positive cash flow for the estate, and which could be completed before January 11, 2014 when the Interim Receivership Proceedings are due to expire. In general, these jobs consisted of orders placed using a Sears-branded credit card, for which the cost of Services had not yet been charged.
18. Based on this initial review, and at Sears’s request, SHS and the Interim Receiver evaluated whether it would be appropriate to pursue the completion of certain Existing Orders that could result in a net financial benefit to the estate. Potential benefits include allowing for realizations of the Company’s inventory at the prices previously contracted with customers and assisting in preserving potential going-concern sale options for parts of the Company pending evaluation by the Interim Receiver and the Secured Creditors. However, the Interim Receiver wished to mitigate the potential downside risk of the estate suffering losses specifically from the incremental costs of completing the Existing Orders and in connection with managing the Licensees in connection with the PSP Jobs.

19. On December 27, 2013, SHS and Sears entered into an agreement (the “**Backstop Agreement**”), a copy of which is attached at Appendix “C”, which provides support to SHS and the Interim Receiver from Sears for the completion Existing Orders and managing the Licensees in connection with PSP Jobs. The key terms of the Backstop Agreement include the following:
- a) SHS, in consultation with Sears, shall use its commercially reasonable efforts to identify those Existing Orders that have a reasonable prospect of being completed on or before January 11, 2014 (being the expiry date of the Interim Receivership Proceedings), and seek to schedule those jobs for completion with the relevant customers and installers (such orders being called Scheduled Jobs);
  - b) SHS shall use commercially reasonable efforts to re-commence the carpet/upholstery cleaning and duct cleaning businesses previously provided by SHS through third party licensees (i.e. PSP Jobs);
  - c) SHS makes no representation or warranty to Sears whatsoever in connection with the work performed in connection with the Scheduled Jobs. Sears shall, at its own expense, honour any warranty made previously by SHS with respect to the Scheduled Jobs completed;
  - d) Sears shall remit to SHS the funds received in respect of completed Scheduled Jobs, net of the Merchant Fee and Commission (as defined in the Backstop Agreement). These amounts will be released without setoff, netting or deduction for costs associated with products or services provided prior to the Date of Appointment. SHS shall be responsible for paying parties who supply work for the Scheduled Jobs or carpet, upholstery, and duct cleaning services sold to customers;
  - e) Sears agrees that it shall pay to SHS the amount of Losses, if any, incurred by SHS in connection with the activities contemplated by the Backstop Agreement. “Losses” is a defined term in the Backstop Agreement. In summary, Losses mean any losses incurred due to the direct labour and material costs relating to the performance of the Scheduled Jobs and PSP Jobs. Pursuant to the Backstop Agreement, Sears does not agree to include other overhead costs (with the



limited exception of some information technology costs) and the fees of the Interim Receiver and its counsel in calculating the Losses. Sears agrees that it cannot claim the Losses that it funds against the estate.

- f) Sears shall not be prevented from electing to honour a warranty claim for an SHS customer for work performed prior to the Date of Appointment, subject to a reservation of rights in connection with any claims Sears may assert against SHS as a result of such claims.
20. Since the execution of the Backstop Agreement, SHS and the Interim Receiver have been working to schedule the Existing Orders with both customers and contract installers. As part of this, customers and installers are required to sign an agreement (the “**Confirmation Agreements**”) with SHS to, among other things, acknowledge the terms under which work is being performed. According to SHS’s books and records at the date of this Second Report, contract installers (which excluded the Licensees and ordinary trade suppliers) as a group were owed approximately \$973,000 as at the date of the Appointment Order. It is a condition of the Confirmation Agreements with installers that they agree in advance with SHS to complete new Scheduled Jobs without demanding payment of any amounts owed to them prior to the Date of Appointment.
21. As of January 2, 2014, SHS was seeking to schedule approximately 284 Existing Orders with customers and contract installers. A further 204 Existing Orders requiring additional inventory (such as windows and doors which are currently produced and sitting with the manufacturers) may also be scheduled, subject to further discussions with the Secured Creditors on a viable go forward plan and securing sufficient and stable financing.
22. SHS will contact individual customers with eligible Existing Orders once contract installers have been confirmed to perform the work.
23. Also as of January 2, 2014, SHS and the Interim Receiver sent notice to 47 Licensees who perform carpet/upholstery and duct cleaning licensees advising that SHS was agreeing to resume these operations on the basis of the Licensees signing a Confirmation Agreement with SHS to, among other things, acknowledge the terms under which work is being performed. Similarly to the contract installers, Licensees are required to acknowledge

that they will complete new orders without demanding payment of any pre-filing amounts owed. According to SHS's books and records at the date of this report, Licensees as a group were owed approximately \$1.8 million as at the date of the Appointment Order (though this includes amounts owing to Licensees who performed work other than carpet/upholstery and duct cleaning services).

24. It is currently anticipated that, should the Interim Receivership Proceedings be continued as discussed later in this report, SHS will seek to schedule additional Existing Orders and PSP Jobs for completion to January 17, 2014, subject to an agreed extension of the term of the Backstop Agreement to that date and Sears providing the Borrowings as discussed in more detail below.
25. For emergency repairs, warranty or service work required by customers of SHS for Services that were either incomplete on or performed prior to the Date of Appointment, the Interim Receiver continues to work with Sears to identify such work orders so that Sears may elect whether it wishes to complete such work immediately. This specific type of work is not expected to result in a net financial benefit to SHS.
26. Counsel for Sears has indicated to the Interim Receiver that to the extent that Sears has rights to assert claims against SHS under the BCA (or any related agreements) for indemnity, it reserves its right to assert a claim for such expenses, and that any work Sears elects to perform for customers of SHS itself should be done so on a without prejudice basis (on the part of Sears and the Interim Receiver). The Interim Receiver also reserved its right to review and vet any such claims and has not yet reviewed the merits of any claims which Sears may wish to assert pursuant to the BCA or otherwise.

#### **CASH FLOW FORECAST AND FINANCING OF RECEIVERSHIP PROCEEDINGS**

27. Attached as Appendix "D" is a summary of actual cash flows to December 27, 2013 and forecast cash flows to March 28, 2014 (the "**Cash Flow Forecast**"), on the assumption these proceedings will be continued in their current form or as Receivership Proceedings following the January 9 Hearing.
28. As of the Date of Appointment, the Company had approximately \$1.2 million in cash in its bank accounts that was recovered by the Interim Receiver. From the Date of

Appointment to January 3, 2014, the Interim Receiver received approximately \$32,000 in miscellaneous accounts receivable collections, and paid or incurred costs required to carry out its duties under the Appointment Order totaling approximately \$490,000, excluding the professional costs of the Receiver and its counsel. These costs primarily related to premises rent; costs for former SHS staff retained by the Interim Receiver to assist in securing the assets, taking inventories, securing and obtaining information from the books and records, addressing customer and supplier inquiries and other essential activities; the cost of the Company's third party systems provider and call center; and amounts payable to Sears pursuant to the BCA. Accordingly, as of January 3, 2014, the Interim Receiver held net available cash (after deducting accrued obligations) of approximately \$706,000.

29. As described further below under the heading "Claims" (at paragraph 42), the Interim Receiver has recently received notice of two potential construction lien trust claims, as well as other potential trust claims, that are being asserted over funds held by SHS and Sears.
30. The funding of the receivership is currently anticipated to be addressed through Receiver's borrowings, proceeds from asset sales and any surplus proceeds from the completion of Scheduled Jobs and PSP Jobs, to the extent that these sources of cash are available when required. As discussed below, Sears has agreed to advance Borrowings (as defined below) permitting the Interim Receiver to maintain the \$706,000 currently being held by the Interim Receiver as a contingency reserve.
31. The Interim Receiver requested funding (the "**Borrowings**") from Sears as permitted by the Appointment Order through an Interim Receiver's Borrowing Certificate, which is secured on a priority basis by the Receiver's Borrowing Charge. Sears provided Borrowings of \$324,000 on January 6, 2014, at an annual interest rate of 9% compounded monthly. The Interim Receiver notes that this rate is equivalent to the interest rate on the Secured Creditors' existing loans, including default interest.
32. Funding is required in order to maintain the operations of SHS during the receivership process. This principally includes payroll costs for the limited employees retained by the Receiver, rent and utilities on leased premises across Canada, and the Company's third party systems provider and call center. The Cash Flow Forecast illustrates the use of the

Borrowings on the basis of continuing the limited operations described above for the forecast period. The Borrowings would cover expected costs through the week of January 17, after which point the available cash from the Borrowings would be substantially used in full (including accrued obligations) if no other receipts from operations or asset sales are realized.

33. The Cash Flow Forecast does not reflect any receipts from asset sales, the limited continuation of operations described above, or from other sources, as the Interim Receiver cannot estimate the quantum or timing of such receipts at this point in time. Such receipts may reduce the amount of further Borrowings required.
34. The Borrowings, as well as the Interim Receiver's fees and those of its counsel during the forecast period, will be paid from available cash and the sale of SHS's assets, including from the Rental Portfolio Sales Process described below. Additional Borrowings may also be required to pay the Interim Receiver's fees and those of its counsel, which continue to accrue.
35. The Borrowings are only sufficient to provide the Interim Receiver, Sears, Alaris and other stakeholders of the Company with a brief period in which to consider the way forward in these proceedings with a view to maximizing recoveries for all stakeholders.

### **SHS PRE-FILING CASH TRANSACTIONS**

36. In the First Report, the Interim Receiver indicated that it had frozen the bank accounts (the "**HSBC Accounts**") held by the Company with HSBC Bank Canada ("**HSBC**"), and established new accounts in the name of the Interim Receiver at the Royal Bank of Canada. The HSBC Accounts consisted of one Canadian dollar account and one US dollar account. The Interim Receiver is informed by former SHS employees that the HSBC Accounts were general operating accounts used for the receipt of funds for the sale of a wide range of products and services, as well as for making payments to the Company's various creditors including employees, trade creditors, installers, contractors, and other parties. In the normal course of business, credit card transactions for customer payments (both on Sears-branded cards as well as third party credit cards) would be cleared through merchant account systems managed by Sears, and the cleared funds would then be remitted to SHS and deposited into the HSBC Accounts. SHS did not maintain any

segregated trust accounts and all funds received by SHS were co-mingled in the HSBC Accounts.

37. Sears has informed the Interim Receiver that it is currently withholding certain funds from SHS related to pre-filing transactions. The Interim Receiver has requested a reconciliation of the funds held by Sears, which is expected to be provided shortly. The Interim Receiver will continue to pursue an accounting from Sears with respect to the funds it holds and a release of funds payable to SHS.
38. In the First Report, the Interim Receiver noted that the balance of funds transferred to the Interim Receiver by HSBC had been revised downwards by approximately \$695,000 from the initial amount indicated. This related to certain cheques or payments which had been presented and accepted by HSBC for payment prior to the Interim Receiver's appointment but for which the account balance had not yet been updated. The Interim Receiver has reviewed these transactions and noted that approximately \$616,000 of the payments were for remittances of employee deductions at source made by the Company shortly before the Interim Receiver's appointment. The Interim Receiver considers that most if not all of these funds would have been subject to a statutory deemed trust in favour of the relevant taxation authorities at the time of the Interim Receiver's appointment had the remittances not been made. The remaining payments included small amounts for workers' compensation premiums, employer health tax, and legal fees.
39. Also as indicated in the First Report, the Interim Receiver is aware of other amounts that were paid by the Company prior to the Interim Receivership Proceedings. Included in Appendix "E" is a breakdown of the cash receipts and payments from December 9 to 13, 2013, the week preceding the Date of Appointment, which are summarized as follows:

Opening bank balance at December 9, 2013	\$2.2 million
Cash receipts	\$1.5 million
Cash payments	(\$2.5 million)
Closing bank balance at December 13, 2013	<u>\$1.2 million</u>

The \$1.2 million of funds remaining after these transactions was swept from the HSBC accounts following the Date of Appointment as described in the First Report.

40. The receipts consisted primarily of co-mingled funds transferred by Sears for various

customer purchases and deposits.

41. The payments consisted of the following:

a) \$2.0 million was paid for employee-related disbursements. Of this:

i) \$1.3 million related to employee compensation costs including payroll, accrued vacation pay, and employee expense reports. The Interim Receiver understands from former SHS employees that these payments resulted in the vast majority of Company employees being paid in full up to the Date of Appointment for pre-filing wage and accrued vacation pay obligations. The Interim Receiver notes that these payments substantially reduced potential amounts payable to employees on account of priority obligations pursuant to sections 81.4 and 81.6 of the BIA, but may in some case have exceeded the priority lien of \$2,000 per employee.

ii) \$0.7 million related to Crown remittances for employee deductions at source related to the wage and vacation payments referred to above. As noted above, the Interim Receiver considers that most if not all of these funds would have been subject to a statutory deemed trust in favour of the relevant taxation authorities at the time of the Interim Receiver's appointment had the remittances not been made.

b) The remaining \$0.5 million related to trade creditor obligations, sales tax remittances, professional costs, and a customer refund.

## **CLAIMS**

42. The Interim Receiver has not made a general call for claims from creditors. However it has received claims from several parties asserting priority claims in these Interim Receivership Proceedings.

43. The Interim Receiver has received several claims pursuant to section 81.1 of the BIA for the repossession of certain inventory by unpaid suppliers. The statutory deadline for filing such claims has now passed and the Interim Receiver is considering all claims

received in accordance with its duties.

44. The Interim Receiver is reviewing the potential existence of other priority claims for statutory deemed trust amounts, or priority claims pursuant to sections 81.4 and 81.6 of the BIA.
45. The Interim Receiver has recently received notice of trust claims from the following parties retained by SHS to perform Services for customers of SHS prior to the Date of Appointment, including the following:
  - a) Three claims for which the claimants have filed builders' liens against customers' properties in connection with unpaid amounts, including Cedar Grove Building Products Ltd. (claiming \$267,000), Rocky View Roofing Inc. (claiming \$1,018.55) and 1310294 Alberta Ltd. (claiming \$432.97); and
  - b) Two claims from installers asserting that SHS is holding funds impressed with a trust, including Katrich Holdings Ltd. (claiming \$21,635.32) and RDJ Holdings Ltd. (claiming \$16,368.09).
46. The Receiver has not yet determined whether any of the trust claims relating in the funds recovered by the Interim Receiver after the Date of Appointment are valid.

#### **APPOINTMENT OF RECEIVER PURSUANT TO SECTION 243 OF THE BIA**

47. The application for the Receivership Order contemplates the appointment of PricewaterhouseCoopers Inc. as Receiver pursuant to section 243 of the BIA, the approval of the Interim Receiver's activities to date, and the continuation of the Interim Receivership Proceedings as a national receivership under the BIA (the "**Receivership Proceedings**").
48. The term of the Interim Receivership Proceedings is limited to January 11, 2014 under the Appointment Order (and as continued under the Amended and Restated Order). At the Date of Appointment, Sears had just issued a Notice of Intention to Enforce Security pursuant to section 244 of the BIA, but the statutory notice period had not yet expired. The Court granted the Appointment Order, which was sought by the Company, on the basis that the Company consented to the making of the order and that the appointment of

an interim receiver was necessary for the protection of the debtor's estate.

49. The Interim Receiver considers that the continuation of the Interim Receivership Proceedings as Receivership Proceedings is appropriate in the circumstances. The issues which precipitated the initiation of the Interim Receivership Proceedings as set out in the initial application materials, including the insolvency of the Company and the need for the protection of the Company's estate, are continuing. The Interim Receiver has taken possession of the assets and operations of the Company and, as indicated above, has been working closely with Sears on plans to continue limited operations. Further time is required to pursue the realization of the Company's assets and to distribute these proceeds in an orderly manner, which can be accomplished through the Receivership Proceedings.

## **RENTAL PORTFOLIO SALES PROCESS**

50. The application for the Receivership Order also contemplates the approval of the Rental Portfolio Sales Process described below.
51. The Interim Receiver is aware of a number of parties who are potentially interested in acquiring some of the assets or operations of SHS. Prior to the Interim Receivership Proceedings, SHS had spoken with a number of parties regarding their interest in purchasing the Company's rental portfolio assets (the "**SHS Rental Portfolio**"). Two preliminary expressions of interest were received from third parties prior to the Date of Appointment, and one of these expressions of interest was signed back by SHS. The Interim Receiver is aware that at least one of these parties remains interested in completing a transaction.
52. Additional parties have contacted the Interim Receiver since the Date of Appointment to express their interest in purchasing some of the Company's other assets and operations. The Interim Receiver will evaluate the options available to pursue such realizations with the Secured Creditors shortly.
53. The Interim Receiver considers it appropriate to seek the Court's approval of the Rental Portfolio Sales Process at this time in order to facilitate the timely completion of a sale of the SHS Rental Portfolio. The SHS Rental Portfolio is comprised of assets and contracts which are unique and separable from the rest of the Company's business operations, and



so can be marketed on their own. The Interim Receiver is aware of interest in this asset expressed to date by several parties, both before and after the Date of Appointment, and considers it appropriate to pursue that interest now. Additionally a sale of the SHS Rental Portfolio would improve the liquidity position of the Company's estate. Further sale processes may be commenced for other assets or operations of the Company in due course once the options available have been discussed with the Secured Creditors.

54. The SHS Rental Portfolio consists of approximately 3,400 residential water heaters and other HVAC equipment that is rented to customers across Canada under contracts ranging from 5 to 15 years.
55. The Interim Receiver has established, subject to the Court's approval, a marketing process to identify and solicit offers from parties to purchase the SHS Rental Portfolio. The details of the proposed Rental Portfolio Sales Process are attached as Appendix "F" and are summarized as follows:
  - a) Initial discussions and marketing of the SHS Rental Portfolio to prospective purchasers has already begun, and will be formally commenced on the Court's approval of the Rental Portfolio Sales Process. Notice of the Rental Portfolio Sales Process will also be published in Globe and Mail (National Edition) within 5 days of the approval of the Rental Portfolio Sales Process;
  - b) Qualified Bidders will be required to submit an offer on the Receiver's Form of Purchase Agreement (as defined in the Rental Portfolio Sales Process) to the Receiver (an "**Offer**") on or before 12:00 noon EST on a date that is 30 days after the Rental Portfolio Sales Process is approved (the "**Offer Deadline**");
  - c) Qualified Bids must meet certain criteria set out in the Rental Portfolio Sales Process, including that they are irrevocable and that they are not conditioned on financing or the performance of further due diligence;
  - d) Each Qualified Bid will be considered by the Receiver, and the Receiver may, at its discretion, negotiate any and all Qualified Bids;
  - e) The Receiver will select a Qualified Bid to consummate a transaction (the "**Accepted Offer**"), and shall promptly notify the successful bidder, that their

offer has been accepted. The Receiver shall take such steps as may be necessary to facilitate a closing of the Accepted Offer within 30 days following the Offer Deadline, and subject to the approval of the Court.

56. The Interim Receiver is of the view that the total time period contemplated by the Rental Portfolio Sales Process provides a reasonable period in which the Receiver, if appointed, will be able to ascertain if an acceptable transaction for the SHS Rental Portfolio can be obtained, particularly given that some limited marketing of the SHS Rental Portfolio has already occurred. Equally, it is anticipated that the Rental Portfolio Sales Process will result in a transaction that will provide further liquidity in order to complete these proceedings and facilitate a distribution to creditors.
57. The Interim Receiver notes that additional funding by way of Receiver's borrowings (or funds from other asset sales) will be required to fund the cost of completing the Rental Portfolio Sales Process. As part of the planned discussions with the Secured Creditors noted above regarding the way forward for these proceedings, the Interim Receiver will address this issue with Sears and Alaris.

#### **ANTICIPATED ACTIONS AFTER THE JANUARY 9 HEARING**

58. Following the January 9 Hearing, and assuming the continuation of the Interim Receivership Proceedings as Receivership Proceedings, the Interim Receiver or PricewaterhouseCoopers Inc. as Section 243 Receiver intends to perform, *inter alia*, the following actions:
  - a) Continue to pursue the completion of Existing Orders and PSP Jobs under the Backstop Agreement (once extended);
  - b) Commence the Rental Portfolio Sales Process, if approved, and develop further realization plans for the balance of the Company's assets and operations;
  - c) Work with Sears and Alaris to consider the way forward in these proceedings with a view to maximizing recoveries for all stakeholders, and address any further funding requirements arising therefrom;
  - d) Continue responding to requests for information from interested parties, including customers and creditors, and coordinate with Sears on requests for

urgent repair or warranty work; and

- e) Address and resolve outstanding priority claims of creditors, and consider whether a broader claims process may be required; and
- f) Other administrative and statutory duties, including processing of payrolls for retained employees and payments for services provided.

**RELIEF SOUGHT**

- 59. The Interim Receiver respectfully requests this Court grant the Receivership Order, including the approval of the Rental Portfolio Sales Process described herein.

All of which is respectfully submitted on this 7<sup>th</sup> day of January, 2014.

**PricewaterhouseCoopers Inc.**

In its capacity as Interim Receiver of SHS Services Management Inc. / Gestion des Services SHS Inc. and SHS Services Limited Partnership



Mica Arlette  
Senior Vice President

**Appendix “A”  
First Report**

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

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

**INTERIM RECEIVER'S FIRST REPORT TO THE COURT**

**December 20, 2013**

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

**IN THE MATTER OF THE INTERIM RECEIVERSHIP OF  
SHS SERVICES MANAGEMENT INC. / GESTION DES SERVICES SHS INC.  
AND SHS SERVICES MANAGEMENT LP**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 47  
OF THE *BANKRUPTCY AND INSOVLENCY 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**

**FIRST REPORT TO THE COURT  
SUBMITTED BY PRICEWATERHOUSECOOPERS INC.  
IN ITS CAPACITY AS INTERIM RECEIVER**

**INTRODUCTION**

1. By Order (the “**Appointment Order**”) of Mr. Justice Moratwetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 13, 2013 (the “**Date of Appointment**”), pursuant to section 47 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**”), PricewaterhouseCoopers Inc. was appointed as interim receiver and receiver (in both capacities referred to as the “**Interim Receiver**”) of all of the assets, undertakings and properties of SHS Services Management Inc. / Gestion des Services SHS Inc. (“**SHS**”) and SHS Services Management LP (“**SHS LP**,” and collectively with SHS, the “**Company**”) acquired for, or used in relation to a business carried on by the Company , including all proceeds thereof (the “**Property**”). The Interim Receiver’s appointment pursuant to section 47 of the BIA was made until January 11, 2014. These proceedings shall be referred to herein as the “**Interim Receivership Proceedings**”. A copy of the Appointment Order is attached as Appendix “**A**” to this report.
2. The application for the Appointment Order was brought by the Company. The Company’s principal secured creditors are Sears Canada Inc. (“**Sears**”) and Alaris Income Growth Fund Partnership (“**Alaris**”), pursuant to the terms of a loan agreement with SHS.
3. The purpose of this report (the “**First Report**”) is to provide an update to the Court on:

- a) The Interim Receiver's activities since the Date of Appointment;
  - b) The relief sought in the comeback hearing scheduled for December 23, 2013 (the "**Comeback Hearing**"); and
  - c) The anticipated actions to be taken in the Interim Receivership Proceedings.
4. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars and exclude harmonized sales tax ("**HST**"). Capitalized terms not otherwise defined are as defined in the Appointment Order.

### **ACTIVITIES OF THE INTERIM RECEIVER**

5. The Appointment Order was granted at approximately 4:30pm on December 13, 2013. Since that time the Interim Receiver has completed several activities pursuant to its duties and powers as set out in the Appointment Order. The activities have been primarily focused on:
- a) taking possession and control of the assets, undertakings and properties of the Company;
  - b) issuing notices of termination to employees on behalf of the Company;
  - c) retaining, on behalf of the Company, certain select staff on a term and task contract basis;
  - d) suspending substantially all business operations pending a financial viability review; and
  - e) completing other statutory and operational requirements.

### **POSSESSION AND CONTROL**

6. Representatives of the Interim Receiver attended at the Company's head office in Markham, Ontario and at the Company's operating locations in Vancouver, Calgary, Edmonton, Winnipeg, Cambridge (ON), Toronto, Ottawa and Montreal in the afternoon and evening of December 13, 2013. On arrival, the Interim Receiver arranged meetings with employees to discuss the status of the Company's operations, the receivership

process, and the Interim Receiver's proposed course of action.

7. At those locations, the Interim Receiver arranged for the locks to be changed on all access doors, changed security system passcodes, secured a copy of the Company's books and records, and obtained payroll records and a list of customers and creditors. Access to the Company's computer systems was restricted to key retained individuals, and backups of system data were obtained. The Interim Receiver also arranged for inventory counts to be performed in each location, which were performed in the week of December 16, 2013.
8. The Interim Receiver did not attend at the Company's locations in Regina (SK) and Oshawa (ON), but has arranged for former employees of SHS who were retained by the Interim Receiver to exercise control over assets at those locations and perform the actions noted above as required.
9. Some of the Company's inventory is located in sites managed by Sears, including certain distribution centres and store locations. Sears has confirmed to the Interim Receiver that this inventory shall not be moved, removed or transferred without the direction of the Interim Receiver. Further, Sears shall not attempt to market, sell, or otherwise relinquish control of this inventory without the direction of the Interim Receiver. Arrangements will be made shortly to perform a count of this inventory.
10. The Interim Receiver has frozen the bank accounts held by the Company with HSBC Bank Canada ("**HSBC**"), and established new accounts in the name of the Interim Receiver at the Royal Bank of Canada. At the time of taking possession, approximately \$1.2 million of funds was held in the accounts of the Company. In the Interim Receiver's notice to creditors filed pursuant to section 246(1) of the BIA, the Receiver indicated funds of approximately \$1.9 million were obtained. This balance had been reported by HSBC, but did not take into account certain cheques or payments totaling approximately \$0.7 million which had been presented and accepted by HSBC for payment prior to the Interim Receiver's appointment but for which the account balance had not yet been updated. This is being reviewed by the Interim Receiver.

#### **EMPLOYEES**

11. Pursuant to paragraph 13 of the Appointment Order, the Interim Receiver, on behalf of the Company, terminated the employment of all of the Company's employees upon taking



possession of the Company on December 13, 2013. Verbal notice was given to employees present at the Company's locations on taking possession that day. Additional notices of termination were sent by mail on December 16, 2013.

12. Certain former employees of SHS have been temporarily retained by SHS through the Interim Receiver on a term and task contract basis to provide assistance to the Interim Receiver.

#### **OPERATION OF THE COMPANY**

13. The assets and operations of the Company were described in the affidavit of Micheal Clements sworn December 12, 2013 (the "**Clements Affidavit**") which was filed as part of the application for the Interim Receivership Proceedings.
14. The products and services that SHS performed included a range of interior and exterior home renovations, repairs, and other home maintenance services, in addition to the sale of air conditioners, furnaces, fireplaces, and interior and exterior renovation-related products, as well as installation and assembly of products purchased at Sears retail outlets (collectively the "**Services**"). The provision of the Services was pursuant to the terms of a Branded Concession Agreement between Sears and SHS dated December 20, 2012 (the "**BCA**"). In addition, SHS operates a hot water heater rental business (the "**Water Heater Business**").
15. The Interim Receiver is not currently accepting new orders for Services under the BCA. Orders for Services that were received by SHS prior to the Date of Appointment and which have not yet resulted in installations or other work performed in customer homes (the "**Work In Process**") are being reviewed and evaluated to determine whether and how they will be completed, and on what terms they may be completed. Among other things, the Interim Receiver is considering the net financial benefit to the estate of SHS of performing such work, in part given the deposits received from a number of customers prior to the Interim Receivership Proceedings.
16. The Interim Receiver is working diligently to complete this review, and will consult further with Sears and Alaris on this issue. The Interim Receiver will report further to the Court on its findings.

17. For emergency repairs, warranty or service work required by customers of SHS for Services that were either incomplete on or performed prior to the Date of Appointment, the Interim Receiver is working with Sears to identify such work orders so that Sears may elect whether it wishes to complete such work immediately. If completed now on behalf of the Company, this specific type of work is not expected to result in a net financial benefit to SHS.
18. Counsel for Sears has indicated to the Interim Receiver that to the extent that Sears has rights to assert claims against SHS under the BCA (or any related agreements) for indemnity, it reserves its right to assert a claim for such expenses, and that any work Sears elects to perform for customers of SHS itself should be done so on a without prejudice basis (on the part of Sears and the Interim Receiver). The Interim Receiver has not yet reviewed the merits of any claims which Sears may wish to assert pursuant to the BCA or otherwise.

#### **OTHER ACTIVITIES**

19. The Interim Receiver notified the Company's various utility and telephone companies of our appointment and provided a copy of the Receivership Order to ensure service was not disrupted. The Interim Receiver has also spoken with certain key service providers to ensure continuation of services pursuant to the terms of the Appointment Order.
20. As of the date of the First Report, the Interim Receiver has received several claims pursuant to section 81.1 of the BIA for the repossession of certain inventory by unpaid suppliers. The Interim Receiver expects to receive additional claims and will consider all such claims in accordance with its duties.
21. The Interim Receiver is reviewing the potential existence of other priority claims for statutory deemed trust amounts, or priority claims pursuant to sections 81.4 and 81.6 of the BIA. The Interim Receiver is aware of amounts that were paid by the Company prior to the Interim Receivership Proceedings which among other things would have reduced these amounts owing. Both Sears and Alaris have requested further information on such payments. The Interim Receiver will report further on this in a future report to the Court.
22. The Interim Receiver has also performed other activities incidental to its duties and powers under the Appointment Order and the BIA, including the following:

- a) Initial review and reconciliation of accounting information provided by the Company, assistance with cut-off of pre- and post-receivership accounting in the Company's financial records, and preparation of initial cash flow forecasts for the Interim Receivership;
  - b) Reviewed the adequacy of insurance coverage, advised the Company's insurer of the receivership, and requested to be added as a named insured to the policy;
  - c) Issued statutory notices pursuant to s. 245 and 246(1) of the BIA, which were mailed on December 20, 2013; and
  - d) Held calls with Sears and Alaris regarding the status of the Interim Receivership Proceedings.
23. The Interim Receiver has established a website ([www.pwc.com/car-shs](http://www.pwc.com/car-shs)) for creditors, customers and other stakeholders to obtain further information on the Interim Receivership Proceedings. As of December 19, 2013 the website had received over 1600 unique visitors. The Company's call center (1-800-469-4663) has responded to over 4,000 calls with information on the Interim Receivership Proceedings. The Interim Receiver's phone hotline (1-855-376-8474) has received over 800 calls, which are being responded to in priority sequence.

### **COMEBACK HEARING**

24. In his endorsement on granting the Appointment Order, Justice Morawetz stipulated that a comeback hearing was to be held on December 23, 2013. The Interim Receiver filed a notice of motion on December 18, 2013 seeking an order to amend the Appointment Order (the "**Amendment Order**") for the following purposes.

### **CONTINUATION OF SERVICES PROVISIONS SHALL NOT APPLY TO BRANDED CONCESSION AGREEMENT**

25. Prior to the Interim Receivership Proceedings, Sears asserted grounds to terminate the BCA, but refrained from actually terminating the contract on the basis that the receivership order would contain a limited exemption from the stay of proceedings relative to Sears's ability to terminate the BCA. At that time, the Interim Receiver agreed

to seek this relief upon its appointment.

26. The BCA is attached as Appendix “**B**” of this report. Due to the commercially sensitive nature of some of the information in the schedules to the BCA, these have not been included.
27. The BCA governs the conduct of the business as it relates to, among other things, the use and promotion of the Sears trademark and logo, as well as other intellectual property of Sears. It also deals with service level commitments in the conduct of the business. Given the use of the Sears’ proprietary intellectual property, Sears support for the continuation of the business during a receivership was contingent upon Sears having the ability to terminate the CBA, on terms providing for a transition period acceptable to the Interim Receiver, on reasonable notice to the Interim Receiver. If the CBA had been terminated before the receivership, it is highly unlikely that the Interim Receiver would be able to market parts of the business or complete any outstanding work orders or repair work.
28. The continuation of the BCA during the receivership gives the Interim Receiver the opportunity to seek buyers for all or parts of the business, and preserves the Interim Receiver’s ability to have Sears process credit card sales and other essential services which are provided to SHS under the CBA and related documents. It also allows SHS to continue to use Sears locations to safely store assets of SHS which are in a Sears store or warehouse, without the cost of relocating these assets to a third party warehouse.
29. The Interim Receiver considers that this relief is appropriate in the circumstances. The specific relief sought includes a notice requirement, transitional provisions, and indemnification for costs by Sears which are of benefit to SHS in the Interim Receivership Proceedings. Further, this exclusion does not affect the rights of SHS with regards to the Water Heater Business, which the Interim Receiver considers to be of potential value.

#### **INCLUSION OF E-SERVICE PROTOCOL**

30. The proposed order includes the adoption of the E-Service Protocol of the Commercial List. The E-Service Protocol has recently come into effect and, pursuant to section 7 of the Protocol, is to be used in all Receivership proceedings. The Receiver believes that implementation of the E-Service Protocol will allow for the efficient service of materials and will benefit all stakeholders.

## **ANTICIPATED ACTIONS IN THE INTERIM RECEIVERSHIP**

31. The Interim Receiver understands that Sears intends to move for an Order for the continuation of these proceedings under section 243 of the BIA, and the conversion of the Interim Receiver to a Receiver pursuant to that section of the BIA. It is anticipated that this motion shall be scheduled during the week of January 6, 2014 (the “**January Hearing**”).
32. Pending the expected application of Sears to expand the Interim Receiver's appointment pursuant to section 243 of the BIA, or further clarification of the Interim Receiver's sale powers at the Comeback Hearing the Interim Receiver will sell assets pursuant to paragraph 3(l) of the Order only if such Property is perishable or likely to depreciate rapidly in value or the sale of assets is permitted by virtue of its appointment as receiver under the CJA.
33. The Interim Receiver is currently in discussions with Sears with regard to provision of critical services to SHS customers on an interim basis, in order to provide stability to the business and support to customers with urgent service issues. The Interim Receiver is hopeful that it will be able to complete an agreement with Sears in this regard prior to December 23, 2013, and will report more fully to the Court at that time.
34. The Interim Receiver is aware of a number of parties who are potentially interested in acquiring some of the assets or operations of SHS. Prior to the Interim Receivership Proceedings, SHS had spoken with a number of parties regarding their interest in purchasing the Water Heater Business. Two preliminary expressions of interest were received from third parties prior to the Date of Appointment, and one of these expressions of interest was signed back by SHS. The Interim Receiver is following up with these parties on these expressions of interest, and is speaking with other parties who have contacted it subsequent to the Date of Appointment to express their interest in the Water Heater Business and/or the other assets and operations of the Company. As part of the January Hearing, the Interim Receiver currently intends to bring an application for the approval of a sale and marketing process for the Company's assets and operations.

35. Between now and the January Hearing, the Interim Receiver intends to perform, *inter alia*, the following actions:

- a) Complete the review of the Work In Process to determine whether and how any Work in Process will be completed, and on what terms, and consult with Sears and Alaris regarding same, including an estimate of costs that may need to be incurred in this regard;
- b) Contact potential interested parties in the assets and operations of the Company, including the Water Heater Business, in anticipation of the commencement of a sale and marketing process to be approved at the January Hearing;
- c) Continue responding to requests for information from interested parties, including customers and creditors, and coordinate with Sears on requests for urgent repair or warranty work; and
- d) Other administrative and statutory duties, including processing of payrolls for retained employees and issuance of T4 and Records of Employment for all employees.

**RELIEF SOUGHT**

36. The Interim Receiver respectfully requests this Court grant the Amendment Order.

All of which is respectfully submitted on this 20<sup>th</sup> day of December, 2013.

**PricewaterhouseCoopers Inc.**

In its capacity as Interim Receiver of SHS Services Management Inc. / Gestion des Services SHS Inc. and SHS Services Management LP



Mica Arlette  
Senior Vice President

**Appendix “B”**  
**Form of assignment of license agreements**



Pamela Murphy  
Vice-President, Specialty Services, Travel and Home Services  
Tel: (416) 941-2393  
Fax: (416) 941-2496  
Email: pamela.murphy@sears.ca

[name and address of SICAS or SCUC Licensee]  
Attention: President

February [ ], 2013

Dear Sir/Madame:

**Re Assignment of Agreement to SHS Services Management Inc.**

Sears recently announced a strategic alliance with SHS Services Management Inc. (“SHS”) whereby its Sears Home Services home improvements business will be managed by SHS. We expect the transfer to occur on or about March 3, 2013 (“Transfer Date”).

We refer to your [Sears Indoor Clean Air Service][Sears Carpet and Upholstery Cleaning Services] License Agreement with Sears Canada Inc. (the “Agreement”). You are hereby notified that, pending closing of the relevant transactions between Sears and SHS, and effective on the Transfer Date, the Agreement will be assigned to SHS. However, the trade-mark license granted in the Agreement will continue to be granted by Sears Canada Inc.

The business will continue to operate under the trusted “Sears Home Services” brand name. SHS will be managing the business but the current Sears staff you rely on will be transferred to SHS, so the transition should be seamless for you and for our customers.

We look forward to a mutually beneficial new stage in our business and continued success in the future.

Yours truly,

Pamela Murphy



**Appendix “C”  
Backstop Agreement**

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## 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”)

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## 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 Hamotown, Carbel, Hemoservices.

**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

**Appendix “D”  
Cash Flow Forecast**



SHS Services Management Inc.  
Cash Flow Forecast  
in 000's

Week Ending:	Notes	Actual	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Total
		Week 1 20-Dec-13	Week 2 27-Dec-13	Week 3 3-Jan-14	Week 4 10-Jan-14	Week 5 17-Jan-14	Week 6 24-Jan-14	Week 7 31-Jan-14	Week 8 7-Feb-14	Week 9 14-Feb-14	Week 10 21-Feb-14	Week 11 28-Feb-14	Week 12 7-Mar-14	Week 13 14-Mar-14	Week 14 21-Mar-14	Week 15 28-Mar-14	
<b>Cash Receipts</b>																	
Operating Receipts	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous Receipts	2	32	-	-	-	-	-	-	-	-	-	-	-	-	-	-	32
<b>Total Cash Inflows</b>		<b>32</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	<b>32</b>
<b>Disbursements</b>																	
Employee Costs																	
Payroll	3	-	33	32	29	29	29	29	29	29	29	29	29	29	29	29	411
Source deductions	4	-	-	13	13	12	12	12	12	12	12	12	12	12	12	12	155
Operating Costs																	
Utilities	5	-	-	-	9	9	9	9	9	9	9	9	9	9	9	9	103
Telecommunications	6	-	-	-	4	4	4	4	4	4	4	4	4	4	4	4	44
Centah	7	-	-	-	-	67	-	-	-	76	-	-	-	57	-	-	200
Technology Services	8	4	-	-	-	-	-	8	-	-	-	8	-	-	-	8	28
Insurance	9	-	-	-	24	-	-	-	24	-	-	-	24	-	-	-	71
Monthly rent / lease payments	10	-	-	133	29	-	-	-	127	-	-	-	127	-	-	-	416
Sears Branded Concession Agreement Payments	11	-	-	-	-	127	-	2	-	127	-	4	-	127	-	4	391
HST	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contingency	13	3	-	10	10	10	10	10	5	5	5	5	5	5	5	5	93
<b>Total Cash Outflows</b>		<b>7</b>	<b>33</b>	<b>188</b>	<b>117</b>	<b>257</b>	<b>63</b>	<b>73</b>	<b>209</b>	<b>261</b>	<b>58</b>	<b>70</b>	<b>209</b>	<b>242</b>	<b>58</b>	<b>70</b>	<b>1,912</b>
<b>Net Cash Flow (Week)</b>		<b>25</b>	<b>(33)</b>	<b>(188)</b>	<b>(117)</b>	<b>(257)</b>	<b>(63)</b>	<b>(73)</b>	<b>(209)</b>	<b>(261)</b>	<b>(58)</b>	<b>(70)</b>	<b>(209)</b>	<b>(242)</b>	<b>(58)</b>	<b>(70)</b>	<b>(1,880)</b>
<b>Net Cash Flow (Cumulative)</b>		<b>25</b>	<b>(8)</b>	<b>(196)</b>	<b>(312)</b>	<b>(570)</b>	<b>(632)</b>	<b>(705)</b>	<b>(914)</b>	<b>(1,175)</b>	<b>(1,232)</b>	<b>(1,302)</b>	<b>(1,511)</b>	<b>(1,753)</b>	<b>(1,810)</b>	<b>(1,880)</b>	
Opening Cash		1,205	1,230	1,197	303	513	256	193	120	(88)	(349)	(407)	(477)	(685)	(927)	(985)	1,205
Net Cash Flow		25	(33)	(188)	(117)	(257)	(63)	(73)	(209)	(261)	(58)	(70)	(209)	(242)	(58)	(70)	(1,880)
Funds received under Receiver's Borrowings					327												327
Contingency reserve	14			(706)													(706)
<b>Ending Cash Balance</b>		<b>1,230</b>	<b>1,197</b>	<b>303</b>	<b>513</b>	<b>256</b>	<b>193</b>	<b>120</b>	<b>(88)</b>	<b>(349)</b>	<b>(407)</b>	<b>(477)</b>	<b>(685)</b>	<b>(927)</b>	<b>(985)</b>	<b>(1,055)</b>	<b>(1,055)</b>
Accrued Obligations																	
Accrued Operating Costs		(154)	(229)	(303)	(325)	(182)	(234)	(284)	(331)	(175)	(222)	(265)	(310)	(172)	(217)	(258)	
Total Accrued Obligations		(154)	(229)	(303)	(325)	(182)	(234)	(284)	(331)	(175)	(222)	(265)	(310)	(172)	(217)	(258)	
<b>Available Cash Balance</b>		<b>1,076</b>	<b>967</b>	<b>-</b>	<b>188</b>	<b>73</b>	<b>(41)</b>	<b>(164)</b>	<b>(419)</b>	<b>(524)</b>	<b>(629)</b>	<b>(742)</b>	<b>(996)</b>	<b>(1,099)</b>	<b>(1,202)</b>	<b>(1,313)</b>	
Note: Accrued Professional Fees	15	250	425	570	664	758	851	945	983	1,020	1,058	1,095	1,133	1,170	1,208	1,245	

**SHS Services Management Inc.**  
**Notes to Cash Flow Forecast**

This cash flow forecast (the "**Forecast**") covers the period from December 16, 2013 to March 28, 2014 (the "**Period**"). It does not include any receipts or disbursements related to the completion of Existing Orders, PSP Jobs, or other asset sales as the timing and quantum of such transactions cannot be estimated at this time

- Note 1** As noted above, the Forecast does not include any estimated receipts from operations before or after the Date of Appointment.
- Note 2** The amount included in the Forecast represents cheques deposited by the Receiver for jobs which were completed pre-filing. The majority of orders are completed on credit card and the Receiver does not anticipate receiving a significant amount of cheques for deposit. As such, no further receipts have been included in the Forecast.
- Note 3** The Receiver has retained key employees to assist with certain receivership activities. The amount forecast represents the estimated net pay per employee, including car allowances.
- Note 4** Source deductions are anticipated to be remitted 1 week in arrears. The amount is estimated to be 29% of gross salaries which is consistent with the Company's average deduction rate for salaried employees.
- Note 5** Utilities includes heat, hydro, janitorial services, waste disposal, snow removal, and security services. The amount was forecast using the average amount paid for each service in the past 4 months at each of the locations. This amount was prorated on a weekly basis as the invoices will all have varying due dates and payment schedules.
- Note 6** Telecommunications costs include phone and internet service costs. The amount included in the Forecast is a prorated weekly estimate based on historical payments made to Bell which covered the period March to November 2013, reduced by 75% to account for the decrease in operations and number of staff using these services.
- Note 7** The Company uses a third party customer management system and call center provider. The forecast reflects cost for estimated usage of services during the Period.
- Note 8** Technology Services includes costs for the payroll software provider, website hosting, call forwarding to the call centre, and certain lease obligations. The amounts are paid at the beginning of the month, for services to be rendered in that month.
- Note 9** The current insurance policy expires on January 11, 2014 and the current insurance provider will not be renewing the policy. The amount included in the Forecast is an estimate from an alternate insurance provider assuming continuation of limited operations. The premium is due monthly, in advance. Any potential refund for overpaid premiums is not anticipated to be received during the Period.
- Note 10** The Company does not own any of the 12 premises which it occupies. The amount forecast for rent/lease payments includes common area maintenance charges, as well as certain utilities which are included in the monthly payment. The amounts are due at the beginning of each month. An extra \$29K has been included in the Forecast to be paid in the week ended January 10, 2014 for past due December rent for three of the premises.
- Note 11** Sears costs include costs owing by SHS to Sears in accordance with the Branded Concession Agreement and the Transition Services Agreement. These include telephone costs, property taxes, CAM contributions, and a Maintenance and Administration Fee.
- Note 12** The Receiver expects to be in a refund position for sales taxes given the volume of expenses and minimal receipts forecast. To remain conservative, these refunds have been excluded from the Forecast.
- Note 13** A contingency for unforeseen costs of \$10K per week have been included in the forecast. This contingency is expected to reduce to \$5K per week starting in week 8 once operations have stabilized.
- Note 14** Contingency reserve included as described in the Second Report.
- Note 15** Accrued professional costs include the fees of the Interim Receiver, the Receiver and its legal counsel. Fees have been estimated based on anticipated hours at varying hourly rates depending on staff level. Anticipated costs are expected to reduce over the Period as urgent matters are dealt with at the beginning of the receivership and operations stabilize. Professional fees are anticipated to be paid from the proceeds of the sale of the assets which has not been reflected in this Forecast.

**Appendix “E”****Summary of amounts received and paid from December 9 to 13, 2013**

<b>Cash Movement December 9 - December 13, 2013</b>	
<b>Cash Inflows</b>	<b>Amount</b>
Customer deposits	99,965
Receipts from Sears	1,456,401
<b>Total Cash Inflows</b>	<b>1,556,365</b>
<b>Cash Outflows</b>	
Employee Related Disbursements	
Payroll	(584,253)
Source deductions	(687,805)
Vacation Pay	(611,530)
Employee Expenses	(71,943)
Employee Pension Contributions	(12,808)
EHT	(35,373)
Garnishments	(633)
WSIB	(33,077)
<b>Total Employee Related Disbursements</b>	<b>(2,037,422)</b>
Customer refund	(1,594)
Professional fees	(190,000)
Sales Taxes	(47,763)
Trade creditor payments	(226,576)
<b>Total Cash Outflows</b>	<b>(2,503,356)</b>
<b>Net Cash Flow</b>	<b>(946,991)</b>
Net Change per Bank:	
Bank Balances Dec 9, 2013	2,151,541
Bank Balances Dec 13, 2013	1,204,549
<b>Net Change per Bank</b>	<b>(946,991)</b>

**Appendix “F”  
Rental Portfolio Sales Process**

**SALE PROCESS  
for the Sale of the SHS Services Management Inc.  
Rental Portfolio Assets (the “SHS Rental Portfolio”)**

***Introduction***

By Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 13, 2013 pursuant to section 47 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**”), PricewaterhouseCoopers Inc. was appointed as interim receiver and receiver (in both capacities referred to as the “**Receiver**”) of all of the assets, undertakings and properties of SHS Services Management Inc. / Gestion des Services SHS Inc. (“**SHS**”) and SHS Services Limited Partnership (“**SHS LP**,” and collectively with SHS, the “**Company**”) acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof (the “**Property**”).

The Company’s principal secured creditors are Sears Canada Inc. (“**Sears**”) and Alaris Income Growth Fund Partnership (the “**Secured Creditors**”). On January 9, 2014, Sears will make an application to the Court to appoint PricewaterhouseCoopers Inc. as Receiver of the Company pursuant to section 243 of the BIA, and to approve a sale process for the SHS Rental Portfolio (the “**Sale Process Order**”).

The SHS Rental Portfolio consists of approximately 3,400 residential water heaters and other HVAC equipment that is rented to customers across Canada under contracts ranging from 5 to 15 years.

The sale of the SHS Rental Portfolio will be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Receiver, the Company or any of their respective agents or estates. The right, title and interest of SHS in and to the SHS Rental Portfolio will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and there against, pursuant to such court orders as may be desirable.

***Objectives***

- To obtain offers to effect a sale of the SHS Rental Portfolio assets;
- To ensure that the process is fair and effective for all parties, and is undertaken in a cost-effective manner recognizing the limited financial resources available;
- To preserve the continuity of the SHS Rental Portfolio’s operations during the Sale Process; and
- To maximize value for the creditors of the Company.

### ***Role of the Receiver***

1. The Receiver will be responsible for managing all aspects of the Sale Process in order to maximize value. Key responsibilities of the Receiver include:
  - a. preparing a list of potential buyers;
  - b. drafting of an initial offering summary (“**Teaser Letter**”);
  - c. assisting legal counsel with the preparation of a confidentiality agreement (“**CA**”);
  - d. preparing a confidential information memorandum (“**CIM**”) and populating and managing an electronic data room (“**Data Room**”);
  - e. managing all communications with prospective buyers and negotiating all deal documentation.
2. The Receiver will have responsibility for managing all communication with prospective bidders prior to and after receipt of binding offers (“**Offers**”). This shall include facilitating the delivery of all communications, contacting prospective bidders and providing them with the Teaser Letter and CIM, coordinating the execution of CAs, managing the process of answering all inquiries from prospective bidders, coordinating any presentations that may be requested by prospective bidders, soliciting and tracking all Offers and reviewing and negotiating deal documentation. No communication is to be had with the customers of the Company, Secured Creditors, or any former Company management or staff, or any individuals retained by the Receiver without the prior written consent of the Receiver or the involvement of the Receiver.

### ***Identification of Potential Interested Parties***

3. The Receiver, with input from the Secured Creditors and former Company staff retained by the Receiver, will develop a list of credible strategic and financial parties who may be interested in acquiring the SHS Rental Portfolio (the “**Potential Bidders**”).
4. The Receiver will publish notice of the Sale Process in the Globe and Mail (National Edition) within five days of the granting of the Sale Process Order.

### ***Sale Process***

1. The Receiver will begin to contact the Potential Bidders to determine if they are interested in acquiring the SHS Rental Portfolio. The Receiver will distribute the Teaser Letter to all Potential Bidders and any other party who requests same.
2. The Receiver, exercising its reasonable judgment, will make an assessment of any party interested in acquiring the SHS Rental Portfolio to determine if they are a credible and qualified bidder that has the financial capability to complete the acquisition of the SHS Rental Portfolio (each a “**Qualified Bidder**”) and the Receiver may require the interested party to provide any information that the Receiver considers reasonable or appropriate in making such assessments. Only Qualified Bidders will be permitted to commence due diligence.

3. Qualified Bidders who wish to commence due diligence will be required to sign a CA, in a form acceptable to the Receiver.
4. Upon execution of a CA, the Receiver will provide each Qualified Bidder with:
  - a. a copy of this Sale Process document; and
  - b. a copy of the CIM and access to the Data Room, where preliminary data will be available.
5. The Receiver will ensure that these materials are available no later than 5 business days after granting of the Sale Process Order.
6. The Receiver will provide each Qualified Bidder with a form of agreement (the "**Form of Purchase Agreement**") at least one week prior to the Offer Deadline listed below.
7. All requests for additional information will be made through the Receiver, who will coordinate responses to such requests.
8. Each Qualified Bidder will be required to submit an offer on the Receiver's Form of Purchase Agreement to the Receiver (an "**Offer**") on or before 12:00 noon EST on [●], such date being 30 days after the Sale Process Order is issued (the "**Offer Deadline**").
9. If no Offer is received prior to the Offer Deadline or no Offer is acceptable to the Receiver, then the Receiver, in consultation with the Secured Creditors, shall have the option to terminate the Sale Process and the Court will be advised accordingly.
10. An Offer submitted will be considered a Qualified Bid only if it is submitted by a Qualified Bidder and the bid complies with all of the following (a "Qualified Bid"):
  - a. it includes a letter (a) summarizing the principal terms of the proposed transaction, including, the purchase price (including liabilities to be assumed), (b) any of the SHS Rental Portfolio assets expected to be excluded (c) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed transaction and any related contingencies, as applicable), (d) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals and (e) stating that the bidder's offer is irrevocable until selection of the Successful Bidder, and provided that if such bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the sale to the Successful Bidder and (ii) the outside date stipulated in the Successful Bid;
  - b. it includes a duly authorized and executed purchase and sale agreement substantially in the form of the Receiver's Form of Purchase Agreement, including the purchase price, expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules

thereto as well as copies of such materials marked to show those amendments and modifications to the Form of Purchase Agreement (the "**Marked Agreement**");

- c. to the extent the Qualified Bidder is relying on third party financing, it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing to consummate the proposed transaction;
- d. it is not conditioned on (i) the outcome of unperformed due diligence by the bidder and/or (ii) obtaining any financing or capital;
- e. it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of any such participation;
- f. it includes an acknowledgement and representation that the bidder will assume the obligations of the Company under the executory contracts and unexpired leases proposed to be assigned (or identifies with particularity which of such contracts and leases the bidder wishes not to assume, or alternatively which additional executory contracts or unexpired leases the bidder wishes to assume), contains full details of the bidder's proposal for the treatment of related cure costs; and it identifies with particularity any executory contract or unexpired leases the assumption and assignment of which is a condition to closing;
- g. it includes an acknowledgement and representation that the bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase agreement; (iii) is a sophisticated party capable of making its own assessments in respect of making its bid and (iv) it agrees to be bound by the terms of this Sale Process.
- h. it includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- i. it is accompanied by a deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Receiver), or such other form acceptable to the Receiver, payable to the order of the Receiver, in trust, in an amount equal to 10% of the Purchase Price to be held and dealt with in accordance with these Sale Process Procedures;
- j. it contains other information reasonably requested by the Receiver;
- k. it is received by the Offer Deadline.

11. The Receiver, may waive compliance with any one or more of the requirements specified herein and deem such non-compliant bids to be a Qualified Bid.
12. All Qualified Bids must be capable of acceptance and must be irrevocable until 11:59 pm EST on [●], such date being 30 days following the Offer Deadline.
13. Subject to its discretion, the Receiver may seek clarifications with respect to any and all Qualified Bids.

#### ***Offer Acceptance and Negotiation Process***

14. Subject to its discretion, the Receiver may seek clarifications with respect to any and all Qualified Bids and negotiate the terms of Qualified Bids prior to selecting the successful bid.
15. The Receiver will select a Qualified Bid to consummate a transaction (the “**Accepted Offer**”), and shall promptly notify the successful bidder, that their offer has been accepted.
16. The Receiver shall take such steps as may be necessary to facilitate a closing of each transaction by [●], such date being 30 days following the Offer Deadline.
17. The Receiver shall not be required to accept the highest, best or any Qualified Bid.
18. In the event that the Accepted Offer is not closed by the successful bidder on the closing date, the Receiver shall be at liberty, but not required, to accept an alternate Qualified Bid (subject to obtaining Court approval of such alternate Qualified Bid). Any such alternate Qualified Bid so accepted shall be closed by [●], such date being 90 days following the Offer Deadline.

#### ***Court Approval and Closing***

19. The Accepted Offer shall be subject only to the conditions contained in the Form of Purchase Agreement and other conditions, if any, as may be acceptable to the Receiver.
20. Any Accepted Offer shall be subject to final Court approval in Canada.
21. Closing of the transaction shall be completed as soon as possible after all approvals are received, but in any event on or before [●] (being 30 days following the Offer Deadline) unless otherwise agreed by the Receiver (and [●], being 90 days following the Offer Deadline, in the case of any alternate Qualified Bid subsequently accepted as set out above).

#### ***Other***

22. The Receiver may amend the Sale Process including as it relates to any time limits as may be necessary to achieve the above objectives, or as may be amended by further Order of the Court. The Receiver may terminate this Sale Process at any time it deems appropriate.