

**CANADIAN LAWN MOWER CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of June 26<sup>th</sup>, 2013

Between

ROBERT FOSTER, MURRAY DAVENPORT,  
ERIC LIVERMAN AND SIDNEY VADISH

**(the “Plaintiffs”)**

and

BRIGGS & STRATTON CANADA INC., BRIGGS & STRATTON CORPORATION,  
ELECTROLUX CANADA CORP., ELECTROLUX HOME PRODUCTS, INC., JOHN DEERE  
CANADA ULC, DEERE & COMPANY, HUSQVARNA CANADA CORP., HUSQVARNA  
CONSUMER OUTDOOR PRODUCTS N.A., INC., KOHLER CANADA CO., KOHLER CO., THE  
TORO COMPANY (CANADA), INC. and THE TORO COMPANY

**(the “Settling Defendants”)**

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**RECITALS**

A. **WHEREAS** the Proceedings have been commenced by the Plaintiffs in Ontario and Quebec which allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of lawn mowers in Canada, lessen unduly competition in the production, manufacture, sale and/or supply of lawn mowers and lawn mower engines in Canada, and/or to conduct business contrary to Part VI of the *Competition Act*, section 7 of the *Consumer Packaging and Labelling Act* and the common law;

B. **WHEREAS** the Settling Defendants have denied, and continue to deny, each and every claim and allegation of wrongdoing and any and all allegations that the Plaintiffs have suffered any damage whatsoever, have been harmed in any way, or are entitled to any relief as a result of any conduct on the part of the Settling Defendants as alleged by the Plaintiffs in the Proceedings or at all;

C. **WHEREAS** the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

D. **WHEREAS** the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which the Settling Defendants expressly deny;

E. **WHEREAS** the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and national resolution of all claims asserted or which could have been asserted against them in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

F. **WHEREAS** the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, the Proceedings as against the Settling Defendants;

G. **WHEREAS** for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification and authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in the Proceedings; and,

H. **WHEREAS** the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Proceedings;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and

dismissed on the merits with prejudice as against the Settling Defendants, without costs as to the Plaintiffs (other than contingency fees which may be awarded out of the Settlement Amount to Class Counsel), the classes they seek to represent, or to the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

## **ARTICLE I** **DEFINITIONS**

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (a) **Account** means an interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of Class Counsel for the benefit of Settlement Class Members.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (c) **Briggs** means Briggs & Stratton Canada Inc. and Briggs & Stratton Corporation, any and all of their subsidiaries and affiliates, and all of their respective present and former, direct and indirect parents, subsidiaries, divisions, affiliates, partners, joint ventures, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, accountants and auditors, consultants, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (d) **Claims Administrator** means the person proposed by Class Counsel and appointed by the Court to administer the Settlement Amount for the benefit of class members, and any employees of such firm.
- (e) **Class Counsel** means Ontario Counsel and Quebec Counsel.
- (f) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST, HST, QST and other applicable taxes or charges of Class Counsel.
- (g) **Class Period** means January 1, 1994 to December 31, 2012.
- (h) **Common Issue** in each Proceeding means: Did the Defendants, or any of them, conspire and/or agree with each other to fix, maintain, raise or stabilize the prices of Lawn Mowers in Canada during the Class Period?
- (i) **Courts** means the Ontario Court and the Quebec Court.
- (j) **Deere** means John Deere Canada ULC and Deere & Company, any and all of their subsidiaries and affiliates, and all of their respective present and former, direct and indirect parents, subsidiaries, divisions, affiliates, partners, joint

ventures, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, accountants and auditors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

- (k) **Defendants** means the entities named as defendants in the Proceedings as set out in Schedule A.
- (l) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and approved by the Courts.
- (m) **Effective Date** means the date when Final Orders have been issued by the Courts approving this Settlement Agreement.
- (n) **Electrolux** - means Electrolux Canada Corp. and Electrolux Home Products, Inc., any and all of their subsidiaries and affiliates, and all of their respective present and former, direct and indirect parents, subsidiaries, divisions, affiliates, partners, joint ventures, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, accountants and auditors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (o) **Excluded Person** means (i) each Defendant, any entity in which a Defendant has a controlling interest or which has a controlling interest in any Defendant and Defendants' legal representatives, predecessors, successors and assigns; and (ii) Defendants' employees, officers, directors, agents and representatives and their family members.
- (p) **Final Order** means a final judgment entered by the Courts in respect of the approval of this Settlement Agreement once the time to appeal such judgments has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the certification or authorization of the Proceedings as a class proceeding and the approval of this Settlement Agreement upon a final disposition of all appeals.
- (q) **Husqvarna** means Husqvarna Canada Corp. and Husqvarna Consumer Outdoor Products N.A., Inc., any and all of their subsidiaries and affiliates, and all of their respective present and former, direct and indirect parents, subsidiaries, divisions, affiliates, partners, joint ventures, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, accountants and auditors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

- (r) **Kohler** means Kohler Canada Co. and Kohler Co., any and all of their subsidiaries and affiliates, and all of their respective present and former, direct and indirect parents, subsidiaries, divisions, affiliates, partners, joint ventures, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, accountants and auditors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (s) **Lawn Mowers** means lawn mowers designed, manufactured or labeled by any Defendant for ultimate sale, including retail sale, in Canada containing a gas combustible engine labeled at 30 horsepower or less.
- (t) **MTD Settlement** means the national settlement agreement entered into between the Plaintiffs and MTD Products Limited, MTD Products Inc., Sears Canada Inc., Sears, Roebuck and Co., and Sears Holding Corporation dated September 29, 2010.
- (u) **Non-Settling Defendants** means Tecumseh Products of Canada, Limited, Tecumseh Products Company, Platinum Equity, LLC, Canadian Kawasaki Motors Inc., Kawasaki Motors Corp., USA, Honda Canada Inc. and American Honda Motor Co., Inc.
- (v) **Ontario Counsel** means Harrison Pensa LLP.
- (w) **Ontario Court** means the Ontario Superior Court of Justice.
- (x) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the notice of certification and settlement approval hearing is first published or as ordered by the Court.
- (y) **Other Actions** means actions or proceedings against the Settling Defendants, other than the Proceedings, to the extent that such actions or proceedings relate to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (z) **Parties** means the Plaintiffs, Settlement Class Members and the Settling Defendants.
- (aa) **Plaintiffs** means the individuals named as plaintiffs in the Proceedings as set out in Schedule A.
- (bb) **Proceeding** means either Ontario Court File No. 766-2010 (London) and Quebec Court (District of Montreal) Action No. 500-06-000507-109 and **Proceedings** means both.
- (cc) **Proportionate Liability** means that proportion of any judgment that, had they not settled, a court or other arbiter would have apportioned to the Releasees, whether pursuant to the *pro rata*, proportionate fault, *pro tanto*, or another method.



- (dd) **Quebec Counsel** means Consumer Law Group Inc.
- (ee) **Quebec Court** means the Superior Court of Quebec.
- (ff) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the Effective Date, in respect of the purchase, sale, pricing, labelling, discounting, advertising, marketing or distribution of Lawn Mowers or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Lawn Mowers. However, nothing herein shall be construed to release any claims that are not related to the allegations made in the Proceedings or Other Actions, or could have been made in the Proceedings or Other Actions, including any claims arising from personal injury or bodily harm, any alleged product defect, breach of warranty, or similar claim between the Parties or between the Settling Defendants and Settlement Class Members relating to Lawn Mowers.
- (gg) **Releasees** means jointly and severally, individually and collectively, the Settling Defendants and the Releasees in the MTD Settlement, but in no event shall it mean or include any of the Non-Settling Defendants.
- (hh) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.
- (ii) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (jj) **Settlement Amount** means CDN \$4,200,000.00.
- (kk) **Settlement Class** means in respect of each of the Proceedings, the settlement class as defined in Schedule A.
- (ll) **Settlement Class Member** means a member of a Settlement Class who does not validly opt-out of the Proceedings.
- (mm) **Settling Defendants** means Briggs & Stratton Canada Inc., Briggs & Stratton Corporation, Electrolux Canada Corp., Electrolux Home Products Inc., John Deere Canada ULC, Deere & Company, Husqvarna Canada Corp., Husqvarna Consumer Outdoor Products N.A., Inc., Kohler Canada Co. Kohler Co., The Toro Company (Canada), Inc. and The Toro Company.

- (nn) **Toro** means The Toro Company (Canada), Inc. and The Toro Company, any and all of their subsidiaries and affiliates, and all of their respective present and former, direct and indirect parents, subsidiaries, divisions, affiliates, partners, joint ventures, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, accountants and auditors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

## **ARTICLE II**

### **SETTLEMENT APPROVAL**

#### **2.1 Best Efforts**

The Parties shall use their best efforts to effectuate this settlement and to secure promptly settlement approval and a complete and final dismissal with prejudice of the Ontario Proceeding as against the Settling Defendants, and a complete and final declaration of settlement out of court of the Quebec Proceeding.

#### **2.2 Motions for Approval**

- (a) The Plaintiffs shall bring motions before the Courts for orders approving the notices described in section 11.1, certifying or authorizing the Proceedings as a class proceeding (for settlement purposes) and approving this Settlement Agreement. The motions regarding this Settlement Agreement shall be brought at the same time as and in conjunction with the equivalent motions regarding the MTD Settlement.
- (b) The Order certifying the Proceeding and approving the notice of certification and settlement approval hearing as well as the Order approving the Settlement Agreement referred to in section 2.2(a) shall be substantially in the form attached hereto as Schedules B and C. The Quebec order authorizing the Proceedings and approving the Settlement Agreement referred to in section 2.2(a) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.

#### **2.3 Settlement Agreement Is Effective**

The Settlement Agreement shall only become final on the Effective Date.

## **ARTICLE III**

### **SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

- (a) On the Effective Date, the Settling Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Account, in full satisfaction of the Released Claims against the Releasees.

- (b) The Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason.
- (c) Class Counsel shall pay the Fonds d'aide aux recours collectifs (Class Action Fund) the amount owing pursuant to the Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs, RRQ c R-2.1, r 2, with regard to the Quebec Proceeding. This amount shall be paid out of the settlement fund by Class Counsel or by the Claims Administrator after the conclusion of the Court approved Distribution Protocol described in section 4.1.
- (d) Ontario Counsel shall maintain the Account as provided for in this Settlement Agreement. Ontario Counsel shall not pay out all or part of the monies in the Account, except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained on notice to the Settling Defendants.

### **3.2 Taxes and Interest**

- (a) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of Settlement Class Members and shall become and remain part of the Account.
- (b) Subject to section 3.2(c), all Canadian taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class Members. Class Counsel or an escrow agent or other administrator appointed by them shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account.
- (c) The Settling Defendants shall have no responsibility to make any filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

## **ARTICLE IV**

### **DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

#### **4.1 Distribution Protocol**

- (a) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.
- (b) The Distribution Protocol shall require the Settlement Class Members seeking compensation to give credit for any compensation received through other

proceedings or in private out-of class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for further compensation.

#### **4.2 No Responsibility for Administration or Fees**

The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, Administration Expenses and Class Counsel Fees.

### **ARTICLE V** **OPTING-OUT**

#### **5.1 Procedure**

- (a) A person may opt-out of the Proceedings by sending a written election to opt-out, signed by the person or the person's designee, by pre-paid mail, courier or fax to Class Counsel at an address to be identified in the notice contemplated by section 11.1 of this Settlement Agreement.
- (b) An election to opt-out will only be effective if it is actually received by Class Counsel on or before the Opt-Out Deadline.
- (c) In addition to a written election to opt-out, a person who wishes to opt-out must provide to Class Counsel, on or before the Opt-Out Deadline:
  - (i) the person's full name, current address and telephone number; and
  - (ii) the name(s) of each entity from whom the person purchased a Lawn Mower during the Class Period along with reasonable proof of purchase
- (d) Quebec Class Members who have commenced Other Actions or commence Other Actions and fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out pursuant to Section 1008 of the *Quebec Code of Civil Procedure*.

#### **5.2 Opt-Out Report by Class Counsel**

Within thirty days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendants, to the extent that such information is known by Class Counsel, the following information in respect of each person, if any, who has opted out of the Proceedings:

- (a) the person's full name, current address and telephone number;
- (b) the information provided by the person in accordance with section 5.1(c); and
- (c) a copy of the opt-out form provided by that person in the opting-out process.

### **5.3 Exclusions**

Class Counsel will cause copies of elections to opt-out of the Proceedings to be provided to counsel for the Settling Defendants. If more than 250 valid opt-outs are received, the Settling Defendants may, at their sole and exclusive option, terminate this Settlement Agreement within sixty days of receipt of the final list of persons who have opted-out of the Proceedings.

## **ARTICLE VI TERMINATION OF SETTLEMENT AGREEMENT**

### **6.1 Right of Termination**

- (a) The Settling Defendants shall, in their sole discretion, have the option to terminate the Settlement Agreement in the event that:
  - (i) any Court declines to approve this Settlement Agreement;
  - (ii) any Court declines to approve the MTD Settlement;
  - (iii) any Court approves this Settlement Agreement in a materially modified form other than as amended by the parties in accordance with section 14.8 hereof;
  - (iv) the Ontario Court refuses or declines to grant a Bar Order that is substantially in accordance with the provisions of section 8.1 hereof;
  - (v) the Quebec Court refuses or declines to grant a Waiver or Renunciation of Solidarity Order that is substantially in accordance with the provisions of section 8.2 hereof; or
  - (vi) any Court fails to issue orders approving this Settlement Agreement or such orders fail to become Final Orders.
- (b) If the Settling Defendants elect to terminate this Settlement Agreement pursuant to 5.3 or 6.1(a), this Settlement Agreement shall be terminated and, except as provided for in section 6.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in any litigation. All material and information provided by the Settling Defendants shall be returned or destroyed by Class Counsel in accordance with section 6.2(a)(iv) and shall not be used in any way Class Counsel.

### **6.2 If Settlement Agreement is Terminated**

- (a) If this Settlement Agreement is terminated:
  - (i) no motion to certify or authorize any of the Proceedings as a class action on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been heard, shall proceed;
  - (ii) any order certifying or authorizing the Proceedings as a class action on the basis of the Settlement Agreement or approving this Settlement

Agreement shall be set aside and declared null and void and of no force or effect, and everyone shall be estopped from asserting otherwise;

- (iii) any prior certification or authorization of the Proceedings as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation; and
- (iv) Within ten days of such termination having occurred, Class Counsel shall destroy or delete all documents or other materials, including electronic information, provided by the Settling Defendants or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other person, shall recover and destroy or delete such documents or information. Class Counsel shall provide the Settling Defendants with a written certification by Class Counsel of such destruction or deletion. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy or delete any of their work product. However, any documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any person in any manner or used, directly or indirectly, by Class Counsel or any other person in any way for any reason without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel.

### **6.3 Allocation of Monies in the Account Following Termination**

If the Settlement Agreement is terminated, Ontario Counsel shall return to the Settling Defendants all monies in the Account including interest, but less the amount of any costs incurred in respect of notice or any income taxes paid in respect of any interest earned on monies in the Account, within thirty business days of the relevant termination event.

### **6.4 Survival of Provisions After Termination**

- (a) If this Settlement Agreement is terminated, the provisions of sections 3.2(b), 3.2(c), 6.1, 6.2, 6.3, 6.4, 9.1, 9.2, and 14.6 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of sections 3.1(d), 3.2(c), 6.1, 6.2, 6.3, 6.4, 9.1, 9.2 and 14.6 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.
- (b) The Settling Defendants and the Plaintiffs expressly reserve all of their respective rights if this Settlement Agreement does not become effective or if this Settlement Agreement is terminated.

**ARTICLE VII**  
**RELEASES AND DISMISSALS**

**7.1 Release of Releasees**

Upon the Effective Date, provided that payment of the Settlement Amount has been made in accordance with section 3.1(a), and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

**7.2 Covenant Not To Sue**

Notwithstanding section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

**7.3 No Further Claims**

The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants.

**7.4 Dismissal of the Proceedings**

- (a) Upon the Effective Date, the Ontario Proceedings shall be dismissed with prejudice and without costs as against the Settling Defendants.
- (b) Upon the Effective Date, the Quebec Proceedings shall be settled, without costs and without reservation as against the Settling Defendants.

**7.5 Dismissal of Other Actions**

- (a) The Settling Defendants represent and warrant that as of the date of this Settlement Agreement they know of no Other Actions against them in Canada advancing allegations in respect of the Released Claims.
- (b) Any Settlement Class Member, who does not opt-out or is not deemed to opt-out in accordance with section 5.1, shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (c) All Other Actions commenced in any province or territory of Canada by any Settlement Class Member, who does not opt-out, shall be dismissed against the Releasees, without costs and with prejudice.



**ARTICLE VIII**  
**BAR ORDERS, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS**

**8.1 Ontario Bar Order**

A bar order shall be granted by the Ontario Court providing the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendants or any other person or party, against a Releasee or by the Settling Defendants against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by a person who has validly opted-out of the Proceedings);
- (b) if, in the absence of section 8.1(a) hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees:
  - (i) the Ontario Plaintiffs and the Settlement Class Members in the Ontario Proceeding shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  - (ii) for greater certainty, the Ontario Plaintiffs and the Settlement Class Members in the Ontario Proceeding shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interests attributable to the Non-Settling Defendants' liability to the Ontario Plaintiffs and the Settlement Class Members in the Ontario Proceeding, if any; and
  - (iii) the Ontario Court shall have full authority to determine the Proportionate Liability at trial or other disposition of the Ontario Proceeding, whether or not the Releasees remain in the Ontario Proceeding or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Releasees are parties to the Ontario Proceeding for that purpose and any such finding by the Ontario Court in respect of the Proportionate Liability shall only apply in the Ontario Proceeding.
- (c) if, in the absence of 8.1(a) hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in the order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Ontario Proceedings.



- (d) a Non-Settling Defendant may, on motion to the Courts determined as if the Settling Defendants remained parties to the Ontario Proceedings, and on at least ten days notice to counsel for the Settling Defendants, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
  - (i) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure*, O. Reg. 194 from each of the Settling Defendants;
  - (ii) oral discovery of a representative of each of the Settling Defendants, the transcript of which may be read in at trial;
  - (iii) leave to serve a request to admit on each of the Settling Defendants in respect of factual matters; and/or
  - (iv) the production of a representative of each of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendants retain all rights to oppose such a motion or to seek the costs of compliance, including any such motion brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial;

- (e) on any motion brought pursuant to section 8.1(d), the Ontario Court may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall timely be provided by the Settling Defendants to Class Counsel;
- (g) the Ontario Court will retain ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario Court for these purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in section 8.1(d) on the Settling Defendants by service on counsel of record for the Settling Defendants in the Proceedings.

## **8.2 Quebec Waiver or Renunciation of Solidarity Order**

A waiver or renunciation of solidarity shall be granted by the Quebec Court providing for the following:

- (a) The Plaintiffs in the Quebec Proceeding and the Settlement Class Members in the Quebec Proceedings expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;

- (b) The Plaintiffs in the Quebec Proceeding and the Settlement Class Members in the Quebec Proceeding shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales of the Non-Settling Defendants and/or other applicable measures of proportionate liability of the Non-Settling Defendants; and
- (c) The ability of the Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Quebec Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Quebec Code of Civil Procedure*.

### **8.3 Claims against Other Entities Reserved**

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

## **ARTICLE IX EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

Whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

### **9.2 Agreement Not Evidence**

The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

### **9.3 No Further Litigation**

No Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of

this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

## **ARTICLE X**

### **CERTIFICATION FOR SETTLEMENT ONLY**

#### **10.1 Certified Class Proceeding**

The Parties agree that the Proceedings shall be certified or authorized as class proceedings solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

#### **10.2 Common Issue**

The Plaintiffs agree that, in the motion for certification or authorization of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will seek to certify is the Settlement Classes.

## **ARTICLE XI**

### **NOTICE TO SETTLEMENT CLASSES**

#### **11.1 Notice of Certified Proceedings**

The proposed Settlement Classes shall be given notice of the certification or authorization of the Proceedings as a class proceeding, the opt-out process and the date of the hearing at which the Courts will be asked to approve the Settlement Agreement.

#### **11.2 Form and Frequency of Notices**

The notices shall be in a form and frequency agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form and frequency of the notices, the notices shall be in a form and frequency ordered by the Courts.

#### **11.3 Method of Disseminating Notices**

The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated in a manner ordered by the Courts.

## **ARTICLE XII**

### **ADMINISTRATION AND IMPLEMENTATION**

#### **12.1 Mechanics of Administration**

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

**ARTICLE XIII**  
**CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

**13.1 Counsel Fees and Notice Costs**

- (a) The costs of the notices referred to in section 11.1 of this Settlement Agreement and any costs associated with receiving opt-outs shall be paid out of the settlement funds with approval of the Court.
- (b) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement.
- (c) Class Counsel Fees and Administration Expenses may only be paid out of the Account after the Effective Date.

**13.2 Administration Expenses**

The Settling Defendants shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

**ARTICLE XIV**  
**MISCELLANEOUS**

**14.1 Motions for Directions**

- (a) The Plaintiffs or the Settling Defendants may apply to the Courts for directions in respect of the implementation of this Settlement Agreement.
- (b) All motions contemplated by this Settlement Agreement shall be on notice to the Parties to this Settlement Agreement. For certainty, notice need not be provided to Settlement Class Members in the event of a motion unless so required by the Court.

**14.2 Releasees Have No Liability for Administration**

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

**14.3 Headings, etc.**

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement;
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement; and

- (c) references to the masculine shall include the feminine and vice versa, and references to the singular shall include the plural and vice versa, as the context requires.

#### **14.4 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

#### **14.5 Ongoing Jurisdiction**

- (a) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in those Proceedings.
- (b) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complimentary order or direction being made or given by the other Court with which it shares jurisdiction over the matter.

#### **14.6 Governing Law**

This Settlement Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Ontario; and with respect to Quebec class members, this Settlement Agreement shall be governed by, construed and interpreted in accordance with the laws of the Province of Quebec.

#### **14.7 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **14.8 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto.

#### **14.9 Binding Effect**

This Settlement Agreement shall be binding upon, and enure to the benefit of the Settlement Class Members, the Settling Defendants and, where applicable, Class Counsel.

#### **14.10 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### **14.11 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **14.12 Language**

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, the Settling Defendants shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **14.13 Transaction**

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the Civil Code of Quebec, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

#### **14.14 Recitals**

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

#### **14.15 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

#### **14.16 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) he or she is a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and,
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

#### **14.17 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

#### **14.18 Notice**

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel:

**Harrison Pensa LLP**

Barristers and Solicitors  
450 Talbot Street  
London, Ontario  
N6A 4K3

Jonathan Foreman  
Telephone: (519) 679-9660  
Facsimile: (519) 667-3362  
Email: jforeman@harrisonpensa.com

**Consumer Law Group Inc.**

4150 Ste. Catherine St. West, Suite 330  
Montreal, Quebec  
H3Z 2Y5

Jeff Orenstein  
Telephone: (514) 266-7863  
Facsimile: (514) 868-9690  
Email: jorenstein@clg.org

**For Briggs:**

**Stikeman Elliott LLP**

5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario  
M5L 1B9

Katherine Kay  
Telephone: (416) 869-5507  
Facsimile: (416) 947-0866  
Email: kkay@stikeman.com

**For Deere:**

**Blake, Cassels & Graydon LLP**

Box 25, Commerce Court West,  
Toronto, Ontario  
M5L 1A9

Jeff Galway

Telephone: (416) 863-3859

Facsimile: (416) 863-2653

Email: jeff.galway@blakes.com

**For Electrolux/Husqvarna:**

**Heenan Blaikie LLP**

Bay Adelaide Centre  
333 Bay Street, Suite 2900  
P.O. Box 2900  
Toronto, Ontario  
M5H 2T4

Angus T. McKinnon

Telephone: (416) 360-2632

Facsimile: (416) 360-8425

Email: amckinnon@heenan.ca

**For Kohler:**

**McMillan LLP**

Brookfield Place  
181 Bay, Suite 4400  
Toronto, Ontario  
M5J 2T3

David W. Kent

Telephone: (416) 865-7143

Facsimile: (416) 865-7048

Email: david.kent@mcmillan.ca

**For Toro:**

**McCarthy Tetrault LLP**

Suite 5300  
Toronto Dominion Bank Tower  
Toronto, Ontario  
M5K 1E6

William D. Black

Telephone: (416) 601-7972

Facsimile: (416) 868-0673


Email: wblack@mccarthy.ca



**14.19 Date of Execution**

The Parties have executed this Agreement as of the date on the cover page.

**Rob Foster and Murray Davenport**

  
Name: Harrison Pensa LLP  
Title: Ontario Class Counsel

**Eric Liverman and Sidney Vadish**

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Name: Consumer Law Group Inc.  
Title: Quebec Class Counsel

**Briggs**

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Name:  
Title:

**Deere**

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Name:  
Title:

**Electrolux**

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Name:  
Title:

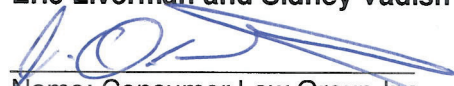
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Name: Consumer Law Group Inc.  
Title: Quebec Class Counsel

**Briggs**

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

**Deere**

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

**Electrolux**

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

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Name: Harrison Pensa LLP  
Title: Ontario Class Counsel

#### Eric Liverman and Sidney Vadish

\_\_\_\_\_  
Name: Consumer Law Group Inc.  
Title: Quebec Class Counsel

#### Briggs

  
\_\_\_\_\_  
Name: David J. Rodgers  
Title: SVP & CFO

#### Deere

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

#### Electrolux

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

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Title: Ontario Class Counsel


#### **Eric Liverman and Sidney Vadish**

\_\_\_\_\_  
Name: Consumer Law Group Inc.  
Title: Quebec Class Counsel

#### **Briggs**

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

#### **John Deere Canada ULC**

  
\_\_\_\_\_  
Name: DAVID A. KIRK  
Title: DIRECTOR FINANCE

#### **Deere & Company**

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

#### **Electrolux**

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

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Name: Harrison Pensa LLP  
Title: Ontario Class Counsel

#### **Eric Liverman and Sidney Vadish**

\_\_\_\_\_  
Name: Consumer Law Group Inc.  
Title: Quebec Class Counsel


#### **Briggs**

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

#### **John Deere Canada ULC**

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

#### **Deere & Company**

  
\_\_\_\_\_  
Name: Luke W. Gaksfatter  
Title: VP Sales & Marketing

#### **Electrolux**

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

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**Rob Foster and Murray Davenport**

\_\_\_\_\_  
Name: Harrison Pensa LLP  
Title: Ontario Class Counsel

**Eric Liverman and Sidney Vadish**

\_\_\_\_\_  
Name: Consumer Law Group Inc.  
Title: Quebec Class Counsel

**Briggs**


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

**Deere**

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

**Electrolux**

*Earl W. Bennett*  
*EVP*  
\_\_\_\_\_  
Name: *Earl W. Bennett*  
Title: *Exec. Vice President*

Husqvarna   
Name: Earl Bennett, EVR  
Title: EARL BENNETT  
Exec. Vice President

**Kohler**

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

**Toro**

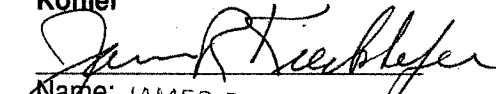
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Name:  
Title:

**Husqvarna**

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

Title:

**Kohler**

  
\_\_\_\_\_  
Name: JAMES R. KIECKHEFER  
Title: *Attorney*

**Toro**

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

Title:



**Husqvarna**

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

Title:

**Kohler**

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

Title:

**Toro**



\_\_\_\_\_  
Name: Timothy P. Dordell

Title: Vice President, Secretary &  
General Counsel

## SCHEDULE A – PROCEEDINGS

Proceeding	Plaintiffs	Defendants	Settlement Class
<p>Ontario Superior Court of Justice</p> <p>Court File No. 766-2010 CP (the “Ontario Action”)</p>	<p>Robert Foster and Murray Davenport</p>	<p>Sears Canada Inc., Sears Holding Corporation, John Deere Canada ULC, Deere &amp; Company, Tecumseh Products of Canada, Limited, Tecumseh Products Company, Platinum Equity, LLC, Briggs &amp; Stratton Canada Inc., Briggs &amp; Stratton Corporation, Canadian Kawasaki Motors Inc., Kawasaki Motors Corp., USA, MTD Products Limited, MTD Products Inc., The Toro Company (Canada), Inc., The Toro Company, Honda Canada Inc., American Honda Motor Co., Inc., Electrolux Canada Corp., Electrolux Home Products, Inc., Husqvarna Canada Corp., Husqvarna Consumer Outdoor Products N.A., Inc., Kohler Canada Co., Kohler Co.</p>	<p>All persons in Canada who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class.</p>
<p>Superior Court of Quebec</p> <p>Court File No. 500-06-000507-109 (the “Quebec Action”)</p>	<p>Eric Liverman and Sidney Vadish</p>	<p>Deere &amp; Company, John Deere Canada ULC, Tecumseh Products Company, Tecumseh Products of Canada Limited, Briggs &amp; Stratton Corporation, Briggs &amp; Stratton Canada Inc., Kawasaki Motors Corp. USA, Canadian Kawasaki Motors, MTD Products Inc., MTD Products Ltd., The Toro Company, The Toro Company (Canada), American Honda Motor Company, Inc., Honda Canada Inc., Electrolux Home Products, Inc., Electrolux Canada Corp., Husqvarna Outdoor Products, Inc., Husqvarna Canada Corp., Kohler Co., Kohler Canada Co., Sears, Roebuck and Co., Sears Canada Inc., Platinum Equity LLC</p>	<p>All persons in Quebec who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons</p>

## SCHEDULE B – CERTIFICATION AND NOTICE APPROVAL

Court File No.: 766-2010 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable ) , the day  
)  
Justice ) of , 2013

BETWEEN:

ROBERT FOSTER and MURRAY DAVENPORT

Plaintiffs

-and-

SEARS CANADA INC.; SEARS HOLDINGS CORPORATION; JOHN DEERE CANADA ULC;  
DEERE & COMPANY; TECUMSEH PRODUCTS OF CANADA, LIMITED; TECUMSEH  
PRODUCTS COMPANY; PLATINUM EQUITY, LLC; BRIGGS & STRATTON CANADA INC.;  
BRIGGS & STRATTON CORPORATION; CANADIAN KAWASAKI MOTORS INC.; KAWASAKI  
MOTORS CORP., USA; MTD PRODUCTS LIMITED; MTD PRODUCTS INC; THE TORO  
COMPANY (CANADA), INC.; THE TORO COMPANY; HONDA CANADA INC.; AMERICAN  
HONDA MOTOR CO., INC.; ELECTROLUX CANADA CORP.; ELECTROLUX HOME  
PRODUCTS, INC.; HUSQVARNA CANADA CORP.; HUSQVARNA CONSUMER OUTDOOR  
PRODUCTS N.A., INC.; KOHLER CANADA CO.; KOHLER CO.

## Defendants

### Proceeding Under the *Class Proceedings Act*, 1992

## ORDER

**(Certification and Notice Approval)**

**THIS MOTION**, made by the Plaintiffs for an Order certifying this action as a class proceeding for settlement purposes as against the Settling Defendants and approving the Notice of Certification and Settlement Approval Hearing was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the Settlement Agreement attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that this action be certified as a class proceeding as against the Settling Defendants for settlement purposes only.
3. **THIS COURT ORDERS** that the Settlement Class be defined as:  
*"All persons in Canada who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class"*
4. **THIS COURT ORDERS** that Robert Foster and Murray Davenport be appointed as the representative Plaintiffs for the Settlement Class.
5. **THIS COURT ORDERS** that the following issue is common to Settlement Class Members:  
*"Did the Defendants, or any of them, conspire and/or agree with each other to fix, maintain, raise or stabilize the prices of Lawn Mowers in Canada during the Class Period?"*
6. **THIS COURT ORDERS** that Settlement Class Members who wish to opt-out of this action must do so by sending a written election to opt-out, together with the information required in the Settlement Agreement, to Class Counsel, by pre-paid mail, courier or fax, received on or before the Opt-Out Deadline.
7. **THIS COURT ORDERS** that any Settlement Class Member who has validly opted-out of this action is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in this action.

8. **THIS COURT ORDERS** that any Settlement Class Member who has not validly opted-out of this action is bound by the Settlement Agreement and may not opt-out of this action in the future.
9. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who has not validly opted-out of this action shall consent and shall be deemed to have consented to the dismissal as against the Settling Defendants of any Other Actions he, she or it has commenced, without costs and with prejudice.
10. **THIS COURT ORDERS AND DECLARES** that each Other Action commenced in Ontario by any Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Settling Defendants, without costs and with prejudice.
11. **THIS COURT ORDERS** that the Long-Form Notice of Certification and Settlement Approval Hearing in substantially the form attached hereto as Schedule “B” is approved.
12. **THIS COURT ORDERS** that the Short-Form Notice of Certification and Settlement Approval Hearing in substantially the form attached hereto as Schedule “C” is approved.
13. **THIS COURT ORDERS** that the Plan of Dissemination of the Notice of Certification and Settlement Approval Hearing in substantially the form attached hereto as Schedule “D” is approved.

Date:

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(Signature of judge, officer or registrar)

## SCHEDULE C - SETTLEMENT APPROVAL

Court File No.: 766-2010 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable ) , the day  
Justice ) of , 2013

BETWEEN:

ROBERT FOSTER and MURRAY DAVENPORT

Plaintiffs

-and-

SEARS CANADA INC.; SEARS HOLDINGS CORPORATION; JOHN DEERE CANADA ULC;  
DEERE & COMPANY; TECUMSEH PRODUCTS OF CANADA, LIMITED; TECUMSEH  
PRODUCTS COMPANY; PLATINUM EQUITY, LLC; BRIGGS & STRATTON CANADA INC.;  
BRIGGS & STRATTON CORPORATION; CANADIAN KAWASAKI MOTORS INC.; KAWASAKI  
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COMPANY (CANADA), INC.; THE TORO COMPANY; HONDA CANADA INC.; AMERICAN  
HONDA MOTOR CO., INC.; ELECTROLUX CANADA CORP.; ELECTROLUX HOME  
PRODUCTS, INC.; HUSQVARNA CANADA CORP.; HUSQVARNA CONSUMER OUTDOOR  
PRODUCTS N.A., INC.; KOHLER CANADA CO.; KOHLER CO.

## Defendants

### Proceeding Under the *Class Proceedings Act*, 1992

**ORDER**  
**(Settlement Approval)**

**THIS MOTION**, made by the Plaintiffs for an Order approving the Settlement Agreement entered into with the Settling Defendants was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the Settlement Agreement attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act*, 1992 and shall be implemented in accordance with its terms.
4. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is incorporated by reference and forms part of this Order and is binding upon the representative Plaintiffs and all Settlement Class Members.
5. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member who has not validly opted-out of this action including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
6. **THIS COURT ORDERS AND DECLARES** that each Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
7. **THIS COURT ORDERS** that each Releasor who has not validly opted-out of this action shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any

Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators..

8. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
9. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
10. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Release Claims, which were or could have been brought, by any Non-Settling Defendant or any other person or party, against a Releasee, or by the Settling Defendants against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted-out of this action.)
11. **THIS COURT ORDERS** that if, in the absence of paragraph 10 hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees:
  - (a) The Plaintiffs and the Settlement Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;



- (b) For greater certainty, the Plaintiffs and the Settlement Class Members shall limit their claim against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interest attributable to the Non-Settling Defendants' liability to the Plaintiffs and the Settlement Class Members, if any;
  - (c) This Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of this Action, whether or not the Releasees remain in this Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Releasees are parties to this Action for that purpose and any such finding by this Court in respect of the Proportionate Liability shall only apply in this Action and shall not be binding upon the Releasees in any other proceedings.
- 12. **THIS COURT ORDERS** that if, in the absence of paragraph 10 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether or equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Action.
- 13. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Court determined as if the Settling Defendants remained a party to this action, and on at least ten (10) days notice to counsel for the Settling Defendants, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
  - (a) Documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* O. Reg. 194 from each of the Settling Defendants;
  - (b) Oral discovery of a representative of each of the Settling Defendants, the transcript of which may be read in at trial;

- (c) Leave to serve a request to admit on each of the Settling Defendants in respect of factual matters; and/or
- (d) The production of a representative of each of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendants retain all rights to oppose such motion(s). Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph 13, the Court may make such Orders as to costs and other terms as it considers appropriate.

- 14. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 13 above on the Settling Defendants by service on counsel of record for the Settling Defendants in this action.
- 15. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role over the Proceedings and the Settling Defendants will attorn to the jurisdiction of this Court for these purposes.
- 16. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants in this action.
- 17. **THIS COURT ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
- 18. **THIS COURT ORDERS** that the Settlement Amount be held in the Account by Class Counsel for the benefit of the Settlement Class, pending further order of the Court, which shall be sought by the Plaintiffs on a motion brought on notice to the Settling Defendants.

19. **THIS COURT ORDERS AND ADJUDGES** that this action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.

Date:

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(Signature of judge, officer or registrar)