

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

Made as of September 29, 2010

Between

**ROBERT FOSTER, MURRAY DAVENPORT,
ERIC LIVERMAN and SIDNEY VADISH**

(the "Plaintiffs")

and

MTD PRODUCTS LIMITED and MTD PRODUCTS INC

("MTD")

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**LAWN MOWER CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

A. WHEREAS the Proceedings have been commenced by the Plaintiffs in Ontario and Quebec which allege that MTD 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 Act*, and the common law;

B. WHEREAS MTD does not admit, through the execution of this Settlement Agreement, any unlawful conduct, either as alleged 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 MTD 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 MTD or evidence of the truth of any of the Plaintiffs' allegations against MTD, which MTD expressly denies;

E. WHEREAS MTD is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against it and/or its retail customers by the Plaintiffs 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, all of the Proceedings as against MTD;

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 or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings; and

H. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes 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 MTD, 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 MTD, subject to the approval of the Courts, 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 Ontario 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) ***Claims Administrator*** means the person proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement, and any employees of such firm.
- (d) ***Class Counsel*** means Ontario Counsel and Quebec Counsel.
- (e) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, GST and other applicable taxes or charges of Class Counsel.
- (f) ***Class Period*** means January 1, 1994 to the present.
- (g) ***Common Issue*** in each Proceeding means: During the Class Period, did the Defendants, or any of them, participate in a conspiracy in respect of the design, manufacture and labeling of lawnmowers of 30 horsepower or less for sale in Canada?
- (h) ***Courts*** means the Ontario Court and the Quebec Court.
- (i) ***Defendants*** means the entities named as defendants in the Proceedings as set out in Schedule A.
- (j) ***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.
- (k) ***Effective Date*** means the date when Final Orders have been received from all Courts approving this Settlement Agreement.

- (l) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (m) **Final Order** means a final judgment entered by a Court in respect of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement upon a final disposition of all appeals.
- (n) **Lawn Mowers** means a lawn mower 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.
- (o) **MTD** means MTD Products Limited and MTD 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, 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, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (p) **Non-Settling Defendant** means a Defendant that is not MTD or Sears.
- (q) **Ontario Counsel** means Harrison Pensa LLP.
- (r) **Ontario Court** means the Ontario Superior Court of Justice.
- (s) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the notice of certification and settlement approval is first published.
- (t) **Other Actions** means actions or proceedings against MTD, 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.
- (u) **Parties** means the Plaintiffs, Settlement Class Members and MTD.
- (v) **Plaintiffs** means the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule A.

- (w) **Proceedings** means one or both of Ontario Court File No. 766-2010 (London) and Quebec Court (District of Montréal) Action No. 500-06-000507-109.
- (x) **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.
- (y) **Preliminary Satisfaction of its Obligation to Cooperate** means the provision by MTD of specific information and details reasonably supporting the attorney proffer made by counsel for MTD to Class Counsel and certain information pertaining to Sears.
- (z) **Quebec Counsel** means Consumer Law Group Inc.
- (aa) **Quebec Court** means the Superior Court of Quebec.
- (bb) **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, discounting, advertising, marketing or distributing 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, including any claims arising from any alleged product defect, breach of warranty, or similar claim between the Parties or between MTD or Sears and Settlement Class Members relating to Lawn Mowers.
- (cc) **Releasees** means, jointly and severally, individually and collectively, MTD and the MTD Retailers, but in no event shall it mean or include any of the Non-Settling Defendants.
- (dd) **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.

- (ee) **MTD Retailer** means retailers, dealers, and distributors, including Sears, (but excluding any Non-Settling Defendant) that purchased, for retail sale in Canada, Lawn Mowers manufactured or sold by MTD.
- (ff) **Sears** means Sears Canada Inc., Sears Holdings Corporation, and Sears, Roebuck and Co. and all of their subsidiaries and affiliates.
- (gg) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (hh) **Settlement Amount** means CDN \$300,000.
- (ii) **Settlement Class** means, in respect of each of the Proceedings, the settlement class defined in Schedule A.
- (jj) **Settlement Class Member** means a member of a Settlement Class who does not validly opt-out of the Proceedings.
- (kk) **U.S. Litigation** means all actions consolidated by the Judicial Panel for Multidistrict Litigation for multidistrict litigation treatment in the United States District Court for the Eastern District of Wisconsin, under the caption In Re: Lawnmower Engine Horsepower Marketing & Sales Practices Litigation, 08-MDL-1999, and in which final approval of a global U.S. settlement was granted on August 16, 2010.
- (ll) **U.S. Witnesses** means those employees and former employees of MTD whose sworn statements were taken by counsel for the plaintiffs in the U.S. Litigation or, in the event that those employees or former employees are unavailable or unwilling to attend, the best available substitute for them.

ARTICLE II

SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete approval and implementation of the settlement, and the final dismissal with prejudice of the Proceedings as against MTD and Sears.

2.2 Motions for Approval

- (a) The Plaintiffs shall bring motions before the Courts for orders approving the notices described in section 12.1, certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding (for settlement purposes) and approving this Settlement Agreement.

- (b) The Plaintiffs may delay bringing the motions referred to in section 2.2(a) for a reasonable period, not to exceed six months unless MTD consents in writing to an extension, to provide Class Counsel the opportunity to negotiate settlements with one or more of the Non-Settling Defendants. During this period, Class Counsel shall make efforts to negotiate and conclude such settlement(s) with one or more of the Non-Settling Defendants.
- (c) The Ontario order certifying the Proceeding and approving the Settlement Agreement referred to in section 2.2(a) shall be substantially in the form attached hereto as Schedule B. The Quebec order authorizing or certifying 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.
- (d) This Settlement Agreement shall only become final on the Effective Date.

2.3 Confidentiality of Settlement Agreement

Until Class Counsel confirms, in accordance with the provisions of section 4.1(c) that MTD has fully discharged their Preliminary Satisfaction of their Obligation to Cooperate, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of counsel for MTD and Class Counsel, as the case may be.

ARTICLE III SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (a) On or by the Effective Date, MTD shall pay the Settlement Amount to Ontario Counsel for deposit into the Account, in full satisfaction of the Released Claims against the Releasees.
- (b) MTD shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, except as specified in section 14.1(a)(i) of this Settlement Agreement.
- (c) 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 after notice to MTD.

3.2 Taxes and Interest

- (a) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Classes 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 Classes. Class Counsel 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) MTD 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 MTD who, in such case, shall be responsible for the payment of all taxes on such interest.

3.3 Cooperation

- (a) It is understood and agreed that all documents and information provided by MTD to Plaintiffs and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose. Plaintiffs and Class Counsel agree they will not publicize, circulate or disclose the documents and information provided by MTD beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law. Any documents and other information provided by MTD will be treated as Confidential, as applicable, under the confidentiality orders entered in the Proceedings.
- (b) It is understood and agreed that all documents and information provided under this section shall only be provided subject to the production order and the protective order substantially in the form incorporated in the order attached hereto as Schedule B. Class Counsel shall move for the protective order at the same time as the motion approving this Settlement Agreement referred to in section 2.2(a).
- (c) Within fifteen days of the Effective Date or at a time mutually agreed upon by the Parties, MTD shall:
 - (i) provide an account to Class Counsel of the facts known to them that are relevant to the Proceedings including, without limitation, their knowledge of how any alleged conspiracy was formed, implemented, and enforced;
 - (ii) provide summary data for sales by MTD of Lawn Mowers delivered in Canada, if any, during the Class Period, to the extent that such data has not previously been provided pursuant to section 3.3(c)(iii). Counsel for MTD agree to be reasonably available as necessary to respond to Class Counsel's questions regarding the summary data produced by MTD. If counsel for MTD are unable to provide an adequate response to Class

Counsel's questions, MTD shall request that an employee of MTD be reasonably available to Class Counsel to respond to Class Counsel's questions;

- (iii) produce relevant non-privileged documents contained in MTD's existing non-privileged document database developed in connection with the U.S. Litigation;
 - (iv) produce all transcripts and/or other sworn statements given by the U.S. Witnesses; and
 - (v) provide complete and unrestricted access to the analysis and results of expert testing undertaken by or on behalf of MTD in respect of the veracity of certain of the horsepower labeling practices of the Non-Settling Defendants.
- (d) Following the Effective Date, MTD shall, at the request of Class Counsel, upon reasonable notice and subject to any applicable legal restrictions, make available for a personal interview with Class Counsel and/or experts retained by Class Counsel at a mutually convenient time, the U.S. Witnesses to provide information regarding the allegations raised in the Proceedings including, without limitation, engine testing and technical data, detailed OEM engine cost and pricing information, information regarding trade organization and business meetings, internal and external communications and electronic data regarding power labeling practices and related information, and Canadian commerce data. The employees shall be made available at a location to be mutually agreed upon having respect for the cost to MTD. Costs incurred by, and the expenses of, the employees of MTD in relation to such interviews shall be the responsibility of MTD. All other costs, including the cost of an interpreter or expenses otherwise related to foreign language translation in connection with interviews, shall be the responsibility of Class Counsel. If a U.S. Witness refuses to provide information, or otherwise cooperate, MTD shall use reasonable best efforts to obtain such cooperation and make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The failure of a U.S. Witness no longer employed by MTD to agree to make him or herself available, or to otherwise cooperate, with the Plaintiffs shall not constitute a violation of this Settlement Agreement.
- (e) MTD agrees to produce the U.S. Witnesses for the certification motion and at trial to support the submission into evidence of any information provided by MTD in accordance with the Settlement Agreement. In addition, MTD agrees to produce the U.S. Witnesses for any other motion or step in the Proceedings where Class Counsel and MTD, acting reasonably, agree that the evidence of MTD is necessary for the motion or step in the Proceedings through acceptable affidavits or other testimony.

- (f) If reasonably necessary, MTD agrees to produce the U.S. Witnesses for examination for discovery, for the sole purpose of adopting and affirming sworn evidence, information, or testimony provided in the U.S. Litigation or proving documents.
- (g) Within fifteen days of the Effective Date or at a time mutually agreed upon by the Parties, MTD shall advise Class Counsel if there are any current or former Canadian employee(s) of MTD who have knowledge of the issues raised in the Proceedings. MTD shall make such Canadian employee(s) available to Class Counsel on the same terms as for the U.S. Witnesses as set out in sections 3.3(d) and 3.3(e).
- (h) Nothing in this Settlement Agreement shall be construed to require MTD or any present or former officer, director or employee of MTD to perform any act, including the transmittal or disclosure of any information, which would violate any federal, provincial, state, local privacy law, or any law of a foreign jurisdiction.
- (i) Nothing in this Settlement Agreement shall require, or shall be construed to require, MTD to disclose or produce any documents or information prepared by or for counsel for MTD, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not MTD.
- (j) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently produced, such documents shall be promptly returned to MTD and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of MTD, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.
- (k) MTD's obligations to cooperate as particularized in section 3.3 shall not be affected by the release provisions contained in section 8.1 of this Settlement Agreement. MTD's obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants. In the event MTD materially breaches section 3.3, Class Counsel may move before the Courts to enforce the terms of this Settlement Agreement.
- (l) A material factor influencing MTD's decision to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from MTD and to avoid seeking information that is unnecessary, cumulative or

duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on MTD.

ARTICLE IV

PRELIMINARY SATISFACTION OF OBLIGATION TO COOPERATE

4.1 Preliminary Satisfaction of Obligation to Cooperate

- (a) Following the execution of this Settlement Agreement, MTD and Class Counsel will meet for the purposes of MTD discharging its Preliminary Satisfaction of its Obligation to Cooperate.
- (b) All material and information provided by MTD at the meeting referred to in section 4.1(a) shall be provided on a privileged and without prejudice basis, with such privilege and protection to be deemed waived by MTD in the event that Class Counsel confirm in writing, in accordance with section 4.1(c), to counsel for MTD that MTD has discharged its Preliminary Satisfaction of its Obligation to Cooperate.
- (c) By noon on September 30, 2010, following the conclusion of the meeting referred to in section 4.1(a), Class Counsel shall provide confirmation in writing to counsel for MTD that MTD has fully discharged its Preliminary Satisfaction of its Obligation to Cooperate and that the Settlement Agreement is, subject to Final Orders being obtained, final and binding on the Parties.
- (d) If Class Counsel fails or refuses to provide written confirmation as provided for in section 4.1(c), the Plaintiffs shall be deemed to have terminated the Settlement Agreement. The privilege and without-prejudice protection attaching to the material and information provided by MTD at the meeting referred to in section 4.1(a) shall continue to apply and will be fully respected, observed and enforced by Class Counsel and the Plaintiffs notwithstanding the termination of the Settlement Agreement. All material and information provided at or in connection with the meeting referred to in section 4.1(a) shall be returned or destroyed by Class Counsel in accordance with section 7.2(a)(iv) and shall not be used in any way by Class Counsel.

ARTICLE V

DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Distribution Protocol

- (a) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to MTD, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.
- (b) The Distribution Protocol shall require 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 any further compensation.

5.2 No Responsibility for Administration or Fees

MTD 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 (except for costs of notice as provided for in section 14.1(a)(i)) and Class Counsel Fees.

ARTICLE VI **OPTING-OUT**

6.1 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 12.1 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 Lawn Mowers during the Class Period along with reasonable proof of purchase.
- (d) Quebec Class Members who have commenced proceedings or commence proceedings and fail to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted out. Quebec Counsel warrant and represent that, to the best of their knowledge, no such action has been commenced as of the date this Settlement Agreement was executed by it.

6.2 Opt-Out Report by Class Counsel

Within thirty days of the Opt-Out Deadline, Class Counsel shall provide to MTD, 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 reasons for opting out;

- (c) the name(s) of each entity from whom the person purchased Lawn Mowers during the Class Period; and
- (d) a copy of all information provided by that person in the opting-out process.

6.3 Exclusions

Class Counsel will cause copies of elections to opt-out of the Proceedings to be provided to counsel for MTD. If more than 2000 opt-outs are received, MTD may, at its 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 VII TERMINATION OF SETTLEMENT AGREEMENT

7.1 Right of Termination

- (a) MTD shall, in its sole discretion, have the option to terminate the Settlement Agreement in the event that:
 - (i) any Court declines to approve this Settlement Agreement or any material part hereof;
 - (ii) any Court approves this Settlement Agreement in a materially modified form other than as amended by the parties in accordance with section 15.8 hereof;
 - (iii) any Court refuses or declines to grant a Bar Order that is substantially in accordance with the provisions of section 9.1 hereof; or
 - (iv) any orders approving this Settlement Agreement made by the Ontario Court or the Quebec Court do not become Final Orders.
- (b) If MTD elects to terminate the Settlement Agreement pursuant to section 6.3 or 7.1(a), or if the Plaintiffs elect to terminate this Settlement Agreement pursuant to section 4.1(d), this Settlement Agreement shall be terminated and, except as provided for in section 7.4, 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 shall be returned or destroyed by Class Counsel in accordance with section 7.2(a)(iv) and shall not be used in any way by Class Counsel.
- (c) Any order, ruling or determination made by any Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol or with respect to the Opt-Out Procedure shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

7.2 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 a Proceeding 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 anyone shall be estopped from asserting otherwise;
 - (iii) any prior certification or authorization of a Proceeding 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, or in the event of non-payment of the Settlement Amount by MTD, Class Counsel shall destroy all documents or other materials provided by MTD or containing or reflecting information derived from such documents or other materials received from MTD and, to the extent Class Counsel has disclosed any documents or information provided by MTD to any other person, shall recover and destroy such documents or information. Class Counsel shall provide MTD with a written certification by Class Counsel of such destruction. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by MTD, or received from MTD 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 MTD. 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.

7.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated, Ontario Counsel shall return to MTD all monies in the Account including interest, but less the amount of any income taxes paid in respect of any interest earned on monies in the Account, within thirty business days of the relevant termination event in section 7.1. MTD and Plaintiffs expressly reserve all of their respective rights if this Settlement Agreement is terminated.

7.4 Survival of Provisions After Termination

- (a) If this Settlement Agreement is terminated, the provisions of sections 3.2(b), 3.2(c), 3.3(a), 3.3(j), 7.1, 7.2, 7.3, 7.4, 10.1, 10.2, and 15.6 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 3.2(b), 3.1(c), 3.3(a), 3.3(j), 7.1, 7.2, 7.3, 7.4, 10.1, 10.2, and 15.6 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) MTD and Plaintiffs expressly reserve all of their respective rights if this Settlement Agreement does not become effective or if this Settlement Agreement is terminated.

ARTICLE VIII RELEASES AND DISMISSALS

8.1 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 Releasers forever and absolutely release the Releasees from the Released Claims.

8.2 Covenant Not To Sue

Notwithstanding section 8.1, 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 Releasers 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.

8.3 No Further Claims

The Releasers 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.

8.4 Dismissal of the Proceedings

The Proceedings shall be dismissed with prejudice and without costs as against MTD.

8.5 Dismissal of Other Actions

- (a) MTD represents and warrants that as of the date of this Settlement Agreement it knows of no Other Actions against it 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 6.1, 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 IX BAR ORDER AND OTHER CLAIMS

9.1 Bar Order

A bar order shall be granted by each of the Courts providing for 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, by any Non-Settling Defendant or any other person or party, against a Releasee, or by MTD 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 9.1(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 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;
 - (ii) for greater certainty, the Plaintiffs and the Settlement Class Members 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 Plaintiffs and the Settlement Class Members, if any;

- (iii) 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.
- (c) if, in the absence of section 9.1(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 Action.
- (d) a Non-Settling Defendant may, on motion to the Courts determined as if MTD remained a party to the Proceedings, and on at least ten days notice to counsel for MTD, 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 MTD;
 - (ii) oral discovery of a representative of MTD, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on MTD in respect of factual matters; and/or
 - (iv) the production of a representative of MTD to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.

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

- (e) on any motion brought pursuant to section 9.1(d), the 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 MTD to Class Counsel;
- (g) the Courts will retain an ongoing supervisory role over the discovery process and MTD will attorn to the jurisdiction of the Courts for these purposes; and

- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in section 9.1(d) on MTD by service on counsel of record for MTD in the Proceedings.

9.2 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 X EFFECT OF SETTLEMENT

10.1 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 MTD, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

10.2 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.

10.3 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, is substantially similar to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant. 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 XI
CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

11.1 Certified Class Proceedings

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.

11.2 Common Issue

The Plaintiffs agree that, in the motions 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 classes that they will seek to certify are the Settlement Classes.

ARTICLE XII
NOTICE TO SETTLEMENT CLASSES

12.1 Notice of Certified Proceedings

The proposed Settlement Classes shall be given notice of: (i) hearings at which the Courts will be asked to certify or authorize the Proceedings as class proceedings and approve the Settlement Agreement; and (ii) the certification or authorization of the Proceedings as class proceedings and the approval of this Settlement Agreement if granted by the Courts. Alternatively, the Parties may agree to seek court approval of a single comprehensive notice.

12.2 Form of Notices

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

12.3 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 XIII
ADMINISTRATION AND IMPLEMENTATION

13.1 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 XIV
CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

14.1 Counsel Fees and Notice Costs

- (a) The costs of the notices referred to in section 12.1 of this Settlement Agreement and any costs associated with receiving opt outs shall be paid as follows:
 - (i) by MTD up to a maximum of \$40,000, and then only in the event that no other Non-Settling Defendant settles the Proceedings as contemplated in sections 2.2(b) and 14.1(a)(ii). For the purposes of this section, if the cost of the notices exceeds \$40,000, Class Counsel or the Claims Administrator, if one is appointed by the Courts, may pay the excess as a disbursement in the litigation or out of the settlement funds. In no case shall MTD pay more than \$40,000, inclusive of all applicable taxes, fees and charges, for the costs associated with the notices; or
 - (ii) if any other Non-Settling Defendant settles the Proceedings, costs of notice shall be paid either out of those settlement funds or as otherwise determined by Class Counsel, but not by the Releasees. Alternatively, the costs of notice may be determined pursuant to the terms of any such settlement agreement between the Plaintiffs and any such other Defendant or Defendants but in no such case will the Releasees have any responsibility to pay notice costs pursuant to this Settlement Agreement or otherwise.
- (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) Except as provided in sections 3.2 and 14.1, Class Counsel Fees and Administration Expenses may only be paid out of the Account after the Effective Date.

14.2 Administration Expenses

MTD 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 XV
MISCELLANEOUS

15.1 Motions for Directions

- (a) Class Counsel or MTD may apply to the Courts for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol.
- (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.

15.2 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, other than the costs of notice as provided in section 14.1(a)(i).

15.3 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; and
- (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.

15.4 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.

15.5 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(s) with which it shares jurisdiction over that matter.

15.6 Governing Law

This Settlement Agreement shall be governed by and 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 and construed and interpreted in accordance with the laws of the Province of Quebec.

15.7 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.

15.8 Amendments

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

15.9 Binding Effect

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

15.10 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.

15.11 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.

15.12 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.

15.13 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.

15.14 Recitals

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

15.15 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

15.16 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or 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.

15.17 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.

15.18 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 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.
1123 Clark St.
3rd Floor
Montréal, Quebec
H2Z 1K3

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


For MTD:

Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario
M5X 1A4


Eric R. Hoaken
Telephone: (416) 777-5780
Facsimile: (416) 863-1716
Email: hoakene@bennettjones.com

15.19 Date of Execution

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

By: 
Name: Harrison Pensa LLP
Title: Ontario Counsel

By: _____
Name: Consumer Law Group
Title: Quebec Counsel

By: Bennett Jones LLP per: 
Name: Bennett Jones LLP
Title: MTD Counsel

By: _____

Name: Harrison Pensa LLP

Title: Ontario Counsel

By: _____

Name: Consumer Law Group *INC.*

Title: Quebec Counsel

By: _____

Name: Bennett Jones LLP

Title: MTD Counsel

SCHEDULE A – PROCEEDINGS

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

SCHEDULE B

Court File No. 766-2010

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable)
Justice) of , the day
) of , 2010

BETWEEN:

ROBERT FOSTER and MURRAY DAVENPORT

Plaintiffs

-and-

SEARS CANADA INC; SEARS HOLDINGS CORPORATION; JOHN DEERE LIMITED;
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

THIS MOTION made by the Plaintiffs for an Order certifying this action as a class proceeding for settlement purposes as it relates to the Defendants, MTD, and approving the Settlement Agreement entered into with MTD 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 MTD:

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 MTD [and Sears]¹ 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:

During the Class Period, did the Defendants, or any of them, participate in a conspiracy in respect of the design, manufacture and labeling of lawnmowers of 30 horsepower or less for sale in Canada?
6. **THIS COURT ORDERS** that MTD shall produce the documents referred to in sections 3.3(c)(iii), and 3.3(c)(iv) of the Settlement Agreement to Class Counsel within the timelines contemplated by the Settlement Agreement.
7. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

¹ Subject to approval by counsel for Sears.

8. **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.
9. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and all Settlement Class Members.
10. **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 the Claims Administrator, postmarked on or before the date which is sixty (60) days from the date of the first publication of the Notice of Certification and Settlement Approval.
11. **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.
12. **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.
13. **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 MTD of any Other Actions he, she or it has commenced, without costs and with prejudice.
14. **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 MTD, without costs and with prejudice.

15. **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.
16. **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.
17. **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.
18. **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.
19. **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.

20. **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 Released Claims, which were or could have been brought, by any Non-Settling Defendant or any other person or party, against a Releasee, or by MTD 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).
21. **THIS COURT ORDERS** that if, in the absence of paragraph 20 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 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 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.

22. **THIS COURT ORDERS** that if, in the absence of paragraph 20 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 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.
23. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Court determined as if MTD remained a party to this action, and on at least ten (10) days notice to counsel for MTD, 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 MTD;
 - (ii) oral discovery of a representative of MTD, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on MTD in respect of factual matters; and/or
 - (iv) the production of a representative of MTD to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.

MTD retains all rights to oppose such motion(s). Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph 23, the Court may make such Orders as to costs and other terms as it considers appropriate.

24. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 23 above on MTD by service on counsel of record for MTD in this action.

25. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and MTD will attorn to the jurisdiction of this Court for these purposes.
26. **THE 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.
27. **THIS COURT ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
28. **THIS COURT ORDERS** that the Settlement Amount be held in trust by Class Counsel for the benefit of the Settlement Class, pending further order of the Court, which shall be sought by the Plaintiff on a motion in the action brought on notice to MTD.
29. **THIS COURT ORDERS** that any document or information produced to Class Counsel under section 3.3 of the Settlement Agreement shall be, and is, subject to the implied and/or deemed undertaking rule and specifically, Rule 30.1, of the *Rules of Civil Procedure*, R.R.O. 192.
30. **THIS COURT ORDERS** that any document or information any document or information produced to Class Counsel under section 3.3 of the Settlement Agreement shall be designated as "Confidential" if it contains business planning or strategic information, pricing information, technical or trade secret design information, or other confidential business information of a highly sensitive commercial nature which has or will have a high probability of causing competitive harm if disclosed to competitors.
31. **THIS COURT ORDERS** that any document or information designated as "Confidential" is Confidential Information.
32. **THIS COURT ORDERS** that any Confidential Information that Class Counsel seeks to submit to this Court in this Proceeding for any reason shall be segregated from other

information and documentation being submitted and shall be submitted to the Court in sealed envelopes indentifying the Confidential Information and clearly and prominently marked:

CONFIDENTIAL INFORMATION

Pursuant to the Court Order dated _____ in Court File No. 766-2010, this envelope shall remain sealed in the Court files and shall not be opened except in accordance with the terms of said order or upon order of the Court and all such sealed envelopes shall not be opened except by the Court and its staff.

33. **THIS COURT ORDERS** that Confidential Information shall be kept confidential in the custody of outside counsel for the Parties and the Non-Settling Defendants, as appropriate, and shall not be disclosed by outside counsel for the Parties or the Non-Settling Defendants to anyone except in accordance with the terms of this Order.
34. **THIS COURT ORDERS** that Confidential Information shall be used solely for the purpose of the Proceeding and may not be used for any purpose whatsoever other than for the purpose of the within proceeding, except as required by law.
35. **THIS COURT ORDERS** that nothing in the Order shall prevent MTD from using or disclosing their own documents or information as they deem appropriate without impairing the confidentiality obligations imposed upon all other parties and persons subject to this Order.
36. **THIS COURT ORDERS AND ADJUDGES** that this action be and is hereby dismissed against MTD [**and Sears**] without costs and with prejudice.

37. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and this Order shall have no force and effect if such approval is not secured in Quebec.

Date:

(Signature of judge, officer or registrar)