

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

**SEARS CANADA INC.,  
AND RELATED APPLICANTS**

**SUPPLEMENT TO THIRTY-NINTH REPORT OF FTI CONSULTING CANADA INC.,  
AS MONITOR**

**September 17, 2020**

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488  
CANADA INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741  
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041  
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND  
3339611 CANADA INC.

APPLICANTS

**SUPPLEMENT TO THIRTY-NINTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

1. On September 16, 2020, the Monitor filed its Thirty-Ninth Report to the Court (the “**Thirty-Ninth Report**”) in these proceedings in relation to a request for approval of the ESL Parties Settlement (as defined in the Thirty-Ninth Report).
2. The Monitor noted in the Thirty-Ninth Report that settlement documentation related to the ESL Parties Settlement would be served in a Supplemental Report of the Monitor.
3. The purpose of this Supplement to the Thirty-Ninth Report is to provide to the Court and to the Service List a copy of the Settlement and Release Agreement entered into between the Monitor, the Litigation Trustee, the Pension Administrator, the 1291079 Ontario Limited, as representative plaintiff, and the ESL Parties (in each case as defined in the Thirty-Ninth Report).
4. Attached hereto as Appendix “A” is a copy of the Settlement and Release Agreement.

5. The Monitor can advise that 54.6% of the gross proceeds of the ESL Parties Settlement will be allocated to Sears Canada through the Monitor Claim and the Litigation Trustee Claim (each as defined in the Thirty-Ninth Report), with the remaining gross proceeds allocated to the other Plaintiffs in the Claims (as defined in the Thirty-Ninth Report).

The Monitor respectfully submits to the Court this, its Supplement to the Thirty-Ninth Report.

Dated this 17th day of September, 2020.

FTI Consulting Canada Inc.  
in its capacity as Monitor of  
the Sears Canada Entities

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Paul Bishop  
Senior Managing Director

A handwritten signature in blue ink that reads "Greg Watson". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Greg Watson  
Senior Managing Director

**APPENDIX "A"**  
**SETTLEMENT AND RELEASE AGREEMENT**

## SETTLEMENT AND RELEASE AGREEMENT

**THIS SETTLEMENT AND RELEASE AGREEMENT** is made as of September 17, 2020, between Sears Canada Inc. ("**Sears**") by its Court-Appointed Litigation Trustee, J. Douglas Cunningham, Q.C. (the "**Litigation Trustee**") in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended ("**CCAA**") (the "**CCAA Proceedings**"); FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**") in the CCAA Proceedings; Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan (the "**Plan**") as appointed under the *Pension Benefits Act* (the "**Pension Administrator**"); and 1291079 Ontario Limited ("**129**") in its capacity as representative plaintiff in the class proceeding certified pursuant to the order of McEwen J. dated June 21, 2019 in Court File No. CV-19-617792-00CL (the Monitor, the Litigation Trustee, the Pension Administrator, and 129, collectively, the "**Plaintiffs**"), , and Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, SPE I Partners, LP, ESL Investors, LLC, RBS Partners, LP, CRK Partners, LLC, RBS Investment Management, LLC, (collectively, the "**ESL Parties**" and as a group, Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, and SPE I Partners, LP are the "**Named ESL Parties**" ), (each individually, a "**Party**", and collectively, the "**Parties**").

**WHEREAS**, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 22, 2017, Sears and its affiliates (together the "**CCAA Applicants**") obtained protection under the CCAA, and the Monitor was appointed;

**WHEREAS**, pursuant to an order of the Court dated December 3, 2018 (the "**LT Order**"), the Litigation Trustee was appointed and empowered to prosecute certain claims including, *inter alia*, the power to settle or compromise any such proceeding, in whole or in part, in consultation with the Monitor and subject to further order of the Court;

**WHEREAS** the Plaintiffs commenced actions in Court File Nos. CV-18-00611219-00CL, CV-18-00611214-00CL, CV-18-00611217-00CL, and CV-19-00617792-00CL against the Named ESL Parties and others arising from a dividend declared and paid by Sears in 2013 (collectively the "**Actions**");

**WHEREAS** Sears has proposed a plan of compromise and arrangement in respect of the CCAA Applicants;

**WHEREAS** the Parties have engaged in arm's-length, good faith negotiations to resolve the Actions as against the Named ESL Parties;

**WHEREAS**, through a judicial mediation process and otherwise the Parties have negotiated a settlement as agreed to in the Minutes of Settlement (as defined below) that will resolve the Actions and all Released Claims whatsoever against the ESL Parties and bring value to the Plaintiffs;

**WHEREAS** the Plaintiffs will provide withdrawal of all claims of intentional wrongdoing against Mr. Lampert in escrow prior to executing this Settlement and Release Agreement and the Parties agree that none of the allegations against Mr. Lampert have been proven;

**WHEREAS** it is essential to the ESL Parties that by virtue of this Settlement Agreement, all Released Claims (as defined below) be fully and finally resolved on the Effective Date so as to bring finality to their potential liability for Released Claims, and without such finality, the financial contributions under the Settlement Agreement would not have been made;

**WHEREAS** the Parties agree that the Approval Order (as defined below), once it becomes a Final Order, and the Settlement Agreement will provide finality to the Released Parties (as defined below) for the Released Claims on the Effective Date;

**NOW THEREFORE** in consideration of the covenants set out below and the representations made in the Recitals above and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, and subject to the provisions set out herein respecting Court approval of this settlement and its material terms, the Parties agree as follows:

## **1. Definitions and Interpretation**

### **(a) Definitions**

**"Approval Order"** means an order of the Court acceptable to the Released Parties and the Plaintiffs approving this Settlement Agreement, containing the terms required in this Settlement Agreement. For greater certainty, an order of the Court substantially as set out in Schedule "B" hereto is acceptable to the Released Parties and the Plaintiffs.

**“CCAA Plan”** means the Joint Plan of Compromise and Arrangement filed by the CCAA Applicants in the CCAA Proceedings, as may be amended, modified or supplemented from time to time in accordance with the terms thereof.

**“CCAA Supervising Judge”** shall mean the judge of the Court assigned to supervise the CCAA Proceedings.

**“Claim”** means any and all manner of actions, causes of action, counterclaims, cross-claims, third (or subsequent) party claims, proceedings, suits, debts, dues, accounts, bonds, covenants, contracts, complaints, rights, obligations, claims, and demands, or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) of any Person that has been, could have been, or may be asserted or made against any other Person, whether personal or subrogated, existing or possible, asserted or made, known or unknown, existing or potential, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in whole or in part, for damages of any kind, based in any way whatsoever upon, arising in any way whatsoever out of, relating in any way whatsoever to, or in connection in any way whatsoever with, any conduct anywhere, from the beginning of time to the date of the Approval Order.

**“Effective Date”** means the date on which the conditions precedent set out in Section 7 herein have been satisfied or waived and the Settlement Funds have been paid.

**“Final Order”** means any order that is no longer subject to (a) any application to amend, vary, or set aside that has not been dismissed; and (b) any appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed by any and all courts with jurisdiction to consider any appeals therefrom.

**“Minutes of Settlement”** means the Terms of Settlement dated September 8, 2020 in the Actions.

**“Person”** means and includes an individual, a natural person or persons, a group of natural persons acting as individuals, a group of natural individuals acting in

collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or limited partnership, a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise, any government entity and any successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity, wherever resident in the world.

**“Plan Beneficiary”** means the members, former members, retirees and beneficiaries under the Plan.

**“Released Claims”** means

- (i) a Claim against the Released Parties based in any way whatsoever upon, arising in any way whatsoever out of, relating in any way whatsoever to the Released Parties’ role, decisions, acts, and omissions
  - a. as shareholders, of, consultants to, or nominator of directors to, Sears;
  - b. relating to the business, operations, management and other affairs of Sears (even if allegedly undertaken in a Released Party’s capacity as employees, officers, directors, or consultants of another corporation or entity), including any matters that were raised or could have been raised in the Actions; and/or
  - c. the consideration and approval of, and the payment by Sears of, a dividend of \$5 per share in 2013; and/or
- (ii) any Claims that the Released Parties have against Sears for contribution and/or indemnity regardless of whether such Claims were filed or required to be filed in accordance with the CCAA claims process.

**“Released Parties”** means, collectively,



- (i) Edward S. Lampert;
- (ii) ESL Investments, Inc.;
- (iii) ESL Partners, LP;
- (iv) ESL Institutional Partners, LP;
- (v) SPE Master I, LP;
- (vi) SPE I Partners, LP;
- (vii) ESL Investors, LLC;
- (viii) RBS Partners, LP;
- (ix) CRK Partners, LLC;
- (x) RBS Investment Management, LLC;

and, as to any of the foregoing Persons, any current or former officer, director, manager, employee, attorney, agent, representative, affiliate, successor, or assign of such Person.

**“Sanction Order”** means the order sanctioning the CCAA Plan as amended as described in this Settlement Agreement.

**“Settlement Agreement”** means this agreement.

**“Settlement Funds”** means the amount of CAD \$22.5 million.

(b) Interpretation

This Settlement Agreement shall be interpreted applying the following rules of interpretation:

- i. any reference in the Settlement Agreement to an order, agreement, contract, instrument, release, exhibit or other document means such order, agreement, contract, instrument, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;

- ii. the division of the Settlement Agreement into “sections” is for convenience of reference only and it does not affect the construction or interpretation of the Settlement Agreement, nor are the descriptive headings of the “sections” intended as complete or accurate descriptions of the content thereof;
- iii. unless the context otherwise requires, words importing the singular shall include the plural and vice versa, and words importing any gender shall include all genders;
- iv. the words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- v. unless otherwise specified, all references to time herein and in any document issued pursuant hereto shall mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day (as defined in the CCAA Plan) shall mean prior to 5:00 p.m. (Toronto time) on such Business Day;
- vi. unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;
- vii. unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and

- viii. references to a specified “article” or “section” shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that section of the Settlement Agreement, whereas the terms, “hereof, “herein”, “hereto”, “hereunder” and similar expressions shall be deemed to refer generally to the Settlement Agreement and not to any particular section or other portion of the Settlement Agreement and include any documents supplemental hereto.

## **2. MOTIONS FOR SETTLEMENT APPROVAL**

### **(a) Settlement Approval**

The Parties shall use their best efforts to implement the Settlement Agreement and, among other things, to secure the prompt, complete, and final dismissal, with prejudice and without costs, of the Actions as against the Named ESL Parties. The Parties shall consent to all orders, including the Approval Order, required to implement the Settlement Agreement provided that they are consistent with the terms of this Settlement Agreement.

### **(b) 1291079 Ontario Limited Action**

129 shall immediately upon execution of this Settlement Agreement, and at its own expense, implement such steps as are necessary under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 to obtain the Approval Order. The Parties hereto agree that the steps shall include the provision of notice to the Class and settlement approval of the Ontario Superior Court of Justice (Commercial List), all brought before the CCAA Supervising Judge (or such judge as the CCAA Supervising Judge shall designate) who the Parties shall seek to have designated as the Class Proceedings Judge for the purposes of settlement approval as soon as practicable and so that the Approval Order is binding on 129 and the Class.

## **3. PAYMENTS**

### **(a) Payments**

The Named ESL Parties shall pay the Settlement Funds by wire transfer of immediately available funds to the Monitor within 15 days after the Approval Order

(containing the terms required herein) becomes a Final Order. Payment of the Settlement Funds to the Monitor shall be in trust for the Plaintiffs.

(b) Use of the Settlement Funds

Payment of the Settlement Funds shall be in full and final satisfaction of all Released Claims of the Plaintiffs. For greater certainty, the settlement shall not be dependent on the Plaintiffs reaching agreement amongst themselves as to allocation of the Settlement Funds as among the Plaintiffs or the Actions. This Settlement Agreement shall be effective with or without the allocation being finalized.

(c) No Further Contributions, Liability or Exposure

Notwithstanding any other provision of the CCAA Plan or the Settlement Agreement, and without in any way restricting, limiting or derogating from the releases provided herein and in the CCAA Plan, or in any way restricting, limiting or derogating from any other protection provided for herein and in the CCAA Plan to the Released Parties, under no circumstances shall the Released Parties be required to or be called upon to make any further financial contribution or payment on account of any Released Claims, nor shall the Released Parties have any liability whatsoever for any Released Claims, over and above the payment of the Settlement Funds. Costs associated with any notice to claimants required in connection with the CCAA Plan or the Settlement Agreement shall not be paid by the Released Parties. The Settlement Funds are the full monetary contribution and payment of any kind to be made by the Released Parties in consideration of the settlement and release of the Released Claims, and are inclusive of all costs, interest, legal fees, taxes (including any GST, HST, or any other taxes that may be payable in respect of the CCAA Plan or the Settlement Agreement) and other costs associated with any distributions, further litigation, administration or otherwise.

#### **4. RELEASES AND BAR ORDER/INJUNCTIONS**

(a) Release

On or prior to the Effective Date of this Settlement Agreement, the Plaintiffs will execute and provide to the Released Parties a release in the form attached hereto

as **Schedule “A”**. In the event that any of the Plaintiffs fails to execute the release, so long as the conditions precedent set out this Settlement Agreement are satisfied, the release shall be effective notwithstanding such failure to execute the form of release.

(b) Approval Order

The Monitor and the Litigation Trustee will, at the expense of Sears, seek an order from the CCAA Court substantially in the form attached hereto as **Schedule “B”** on notice to the service lists in the Actions and the CCAA Proceeding and any other parties deemed by the Plaintiffs to be appropriate.

(c) Dismissal Orders

The Plaintiffs will obtain orders dismissing the Actions, without costs and with prejudice, immediately upon receipt of the Settlement Funds.

(d) Acknowledgement that Knowledge not Complete

For greater certainty, the Parties acknowledge that they may subsequently discover facts adding to those they now know, but nonetheless agree that on the Effective Date, all of the protections provided for herein (including the protections in section 4 of this Settlement Agreement) for the Parties and the Released Parties shall be definitive and permanent irrespective of whether any subsequently discovered facts were unknown, unsuspected, or not disclosed.

By means of this Settlement Agreement, the Parties waive any right they might have under the law, common law, civil law, in equity or otherwise, to disregard or avoid the protections provided for herein (including the protections in section 4 of this Settlement Agreement) and expressly relinquish any such right and each member of the Class and each Plan Beneficiary and any party that may be subrogated to such claims shall be deemed to have waived and relinquished such right in respect of Released Claims or any Claims related to the subject matter of the Actions. Furthermore, the Parties agree to this waiver of their own volition, with full knowledge of its consequences and that this waiver was negotiated and constitutes a key element of the Settlement Agreement.

(e) Adversary Proceeding

For the avoidance of doubt, nothing in this Settlement Agreement shall effect a release or waiver by any of the Released Parties of (or otherwise impair) any Claims, rights or defenses, including the Allowed Unsecured Claim (as defined below), that they may have in connection with the Chapter 11 Proceedings (as defined below) against Sears Holdings (as defined below) or any of its affiliated debtors in the Chapter 11 Proceedings, in connection with the adversary proceeding pending in the Chapter 11 Proceedings styled *Sears Holdings Corp., et al. v. Edward Scott (“Eddie”) Lampert, et al.*, Adv. Pro. No. 19-08250 (RDD) (the “**Adversary Proceeding**”), or otherwise against any Person relating to the Chapter 11 Proceedings or the Adversary Proceeding. For the further avoidance of doubt, and notwithstanding anything to the contrary contained in this Settlement Agreement, no such Claims, rights or defenses of the Released Parties shall be deemed Released Claims under this Settlement Agreement.

## 5. PUBLIC STATEMENTS

(a) Public Disclosures

On date the Approval Order is granted, the Parties shall release a joint public statement as follows:

The Plaintiffs and Edward Lampert, on behalf of himself and ESL, have reached a CAD \$22.5 million settlement on claims of potentially as much as \$550 million on the eve of a scheduled 6-week trial. The claims of intentional wrongdoing against Mr. Lampert were withdrawn prior to the settlement, and the settlement has been made on the basis that none of the allegations against Mr. Lampert have been proven.

This settlement, along with the \$50 million settlement with the Sears Canada directors, will allow many Sears retirees to have and enjoy increased pension benefits and other creditors to benefit.

Edward Lampert was not a director of Sears Canada at the relevant time, he and ESL reinvested over \$200 million in Sears Canada after the dividend was paid, and they suffered significant financial losses upon Sears Canada’s insolvency. ESL’s contribution to this overall settlement is in the best interests of all former Sears Canada employees and creditors.

## (b) Non-Disparagement

The Plaintiffs agree not to disparage the Released Parties, the Released Parties' directors, officers, employees, shareholders, or the Released Parties agents, affiliates and subsidiaries in any manner likely to be harmful to them or their businesses, business reputation, or personal reputation.

The Defendants agree to not disparage the Plaintiffs, the Plaintiffs' directors, officers, employees, shareholders, or the Plaintiffs' agents, affiliates and subsidiaries, in any manner likely to be harmful to them or their businesses, business reputation, or personal reputation.

**6. CCAA PLAN**

## (a) Amendment to the CCAA Plan

The CCAA Plan will be amended to provide for full and complete releases in favour of the Released Parties consistent with this Settlement Agreement. The amendments to the CCAA Plan (including the wording of the release) will be in a form and substance acceptable to the Released Parties, acting reasonably.

The Monitor will, at Sears's expense and subject to approval of the CCAA Plan by the requisite majorities of the creditors, seek approval of the amended CCAA Plan from the Court on notice to the service list in the CCAA Proceedings.

## (b) Indemnity Claims

The Released Parties will waive any distribution on account of their indemnity claims and release such indemnity claims filed in the CCAA Proceedings . The Released Parties further release any Released Claims they may have.

**7. CONDITIONS PRECEDENT**

The terms of this Settlement Agreement are conditional upon the fulfillment (or waiver as applicable) of the following conditions:

## (a) Granting of the Approval Order

The Approval Order shall have been granted by the Court.

The Released Parties, in their sole discretion, may waive this condition in full or in part and elect to proceed with the settlement if the Approval Order is granted but does not contain all of the terms of the draft order set out at **Schedule "B"**. The Released Parties will have 10 Business Days from the making of such order that does not contain all of the terms of the draft order set out at **Schedule "B"** to advise the Plaintiffs whether they are waiving this condition or terminating the settlement. If the Released Parties do not advise within such 10 Business Day period that they are terminating the settlement, then the condition shall be deemed waived. If this condition is not satisfied or waived (and not deemed waived), the Released Parties shall have the absolute right to terminate the settlement and the parties will not be bound by this Settlement Agreement.

(b) Expiry of Appeal Periods

The Approval Order shall have become a Final Order.

(c) Release

The Plaintiffs executing and delivering a release in the form attached as **Schedule "A"** or such release being deemed effective in accordance with Section 4(a).

For greater certainty, the CCAA Plan and Sanction Order shall be supplemental to, and shall not derogate from, the releases and injunctions set out in this Settlement Agreement and the Approval Order. The effectiveness of this Settlement Agreement shall not be conditional upon the granting of the Sanction Order or the implementation of the CCAA Plan.

## 8. EFFECT OF SETTLEMENT

(a) The Allegations Were Partially Withdraw and Were Not Proven; There is No Admission of Liability

(i) The claims of intentional wrongdoing against Mr. Lampert were withdrawn prior to the Effective Date, and the Settlement Agreement has been made



on the basis that none of the allegations against Mr. Lampert have been proven.

- (ii) Neither this Settlement Agreement, nor anything contained herein, shall be interpreted as a concession or admission of anything to the contrary. In particular it shall not be interpreted as a concession or admission of wrongdoing or liability by the Released Parties, or as a concession or admission by the Released Parties of the truthfulness or merit of any claim or allegation asserted in the Actions. Neither this Settlement Agreement, nor anything contained herein, shall be used or construed as an admission by the Released Parties of any fault, omission, liability or wrongdoing whatsoever. Any and all liability or wrongdoing is expressly denied by the Released Parties.

(b) Agreement Not Evidence

Except as required (i) to defend against the assertion of Released Claims, (ii) to enforce the terms of the Settlement Agreement, (iii) in the Actions, (iv) in the CCAA Proceedings, or (v) in other proceedings as evidence of the terms and scope of this Settlement Agreement, neither this Settlement Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Settlement Agreement shall be, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal, regulatory or administrative action or proceeding.

## 9. SEARS HOLDINGS CLAIM

- (a) Pursuant to a separate settlement between (i) the Plaintiffs and (ii) Sears Holdings Corporation (“**Sears Holdings**”) and its affiliated debtors in the Chapter 11 proceedings pending in the U.S. Bankruptcy Court for the Southern District of New York (Case No. 18-23538 (RDD)) (the “**Chapter 11 Proceedings**”), the Plaintiffs were granted and collectively hold an allowed general unsecured claim against Sears Holdings under Class 4 in the confirmed Chapter 11 plan in the Chapter 11 Proceedings in the amount of USD154,249,576 (the “**Allowed Unsecured Claim**”).

- (b) At the written election of ESL Investments, Inc (“**ESL**” and the “**Election**”), which it shall be free to make in its sole and unfettered discretion and (except as provided in the next sentence of this paragraph 9(b)) at any time, the Plaintiffs shall either (x) execute documents reasonably requested by ESL for the purposes of assigning all of the Plaintiffs’ right, title and interest in the Allowed Unsecured Claim to ESL or its designee, or (y) retain legal title to the Allowed Unsecured Claim, but grant ESL or its designee a 100% participation interest in the Allowed Unsecured Claim such that, upon their receipt of any distributions, dividends or other recovery in respect of the Allowed Unsecured Claim, the Plaintiffs shall remit all such distributions, dividends or other recovery, net of any taxes or withholdings required by applicable law, but without counterclaim or set-off, to ESL or its designee, it being understood and agreed that any and all such distributions, dividends or recoveries shall be for the benefit and account of ESL (or its designee) and not for the benefit or account of the Plaintiffs. If ESL has not previously made the Election to take (for itself or its designee) an assignment of the Allowed Unsecured Claim, then the Monitor shall notify ESL in writing 30 days in advance of the final distribution of the estate of Sears in the CCAA Proceedings and/or any motion for termination of the CCAA Proceedings, and ESL shall then have 10 days thereafter to provide its direction, at its sole and unfettered discretion, to the Monitor for the Plaintiffs to assign all right, title and interest in the Allowed Unsecured Claim to ESL or its designee, or to release the Allowed Unsecured Claim.
- (c) Without limiting the foregoing, ESL may elect to release the Allowed Unsecured Claim at any time on reasonable written notice to the Plaintiffs.
- (d) If ESL wishes to take (for itself or its designee) an assignment of, or release, the Allowed Unsecured Claim, the Plaintiffs shall cooperate and execute such documents as may reasonably be necessary to effect the assignment or release of the Allowed Unsecured Claim.
- (e) ESL acknowledges that any assignment of the Allowed Unsecured Claim by the Plaintiffs to ESL or its designee shall be on an ‘as is, where is’ basis without any representations, warranties, promises or guarantees whatsoever, including with respect to any recoveries that may be available from that Allowed Unsecured

Claim or otherwise. The Plaintiffs' obligations with respect to the Allowed Unsecured Claim are limited to those matters expressly set out in paragraphs 9(b) and 9(d) above. For greater certainty, the Plaintiffs shall have no obligation to take any steps to enforce or pursue any recoveries in respect of the Allowed Unsecured Claim. For greater certainty, the settlement shall be conditional upon approval by the Ontario Superior Court of Justice (Commercial List) pursuant to a Final Order of the assignment of the Allowed Unsecured Claim by the Plaintiffs to ESL pursuant to the Approval Order but is not conditional upon the effectiveness of the assignment or any approval by any other court; provided however, that in the event that the assignment is not effective, then the Plaintiffs shall hold in trust for ESL (or its designee) and shall remit all distributions, dividends or other recovery obtained in respect of the Allowed Unsecured Claim, net of any taxes or withholdings required by applicable law, but without counterclaim or set-off, to ESL or its designee.

- (f) The Plaintiffs shall request a provision as set out in the form of Approval Order attached hereto as Schedule "B" that would provide the Monitor with exclusive authority to take any steps on behalf of all of the Plaintiffs to comply with the obligations set out in paragraphs 9(b) and 9(d) above in respect of the assignment or release of the Allowed Unsecured Claims or the remittance to ESL (or its designee) of any distributions, dividends, or other recovery in respect of the Allowed Unsecured Claims or otherwise. The approval of the Ontario Superior Court, pursuant to a final, non-appealable Approval Order, is a condition precedent to this settlement.

## **10. MISCELLANEOUS**

- (a) Entire Agreement

This Settlement Agreement and the documents referred to herein together constitute the entire agreement between the Parties with respect to the matter herein. The execution of this Settlement Agreement has not been induced by, nor do any of the Parties rely upon or regard as material, any representations,

promises, agreements or statements whatsoever not incorporated herein and made a part hereof.

(b) Governing Law

This Settlement Agreement shall be governed by, and will be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. The Parties hereby attorn to the jurisdiction of the Court in respect of any dispute arising from this Settlement Agreement.

(c) Amendment

No amendment, supplement, modification or waiver or termination of this Settlement Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the party to be bound thereby. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement to be performed by such other Party.

(d) Expenses

Each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with this Settlement Agreement and its implementation.

(e) Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement. Delivery of an executed original counterpart of a signature page of this Settlement Agreement by facsimile or electronic transmission shall be as effective

as delivery of a manually executed original counterpart of this Settlement Agreement.

(f) Motions for Directions

To the extent that there is any dispute among the Parties regarding this Settlement Agreement, such dispute shall be decided by Justice Hainey on a summary basis or, in the event Justice Hainey is unable to do so, by another judge of the Court to be designated by Justice Hainey or the Commercial List office.

(g) Negotiated Agreement

The Settlement Agreement has been the subject of negotiations and many discussions among the Parties. Each of the Parties 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 drafters of the Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Settlement Agreement (including versions used to settle these actions with other defendants) or any agreement in principle, shall have no bearing upon the proper interpretation of the Settlement Agreement.

(h) Acknowledgements

Each of the Parties hereby represents and warrants that

- i. Subject to court approval in the case of the Monitor, the Litigation Trustee and 129, the Party has all requisite corporate power and authority to execute, deliver and perform the Settlement Agreement and has been duly authorized to do so;
- ii. the Settlement Agreement has been duly and validly executed and delivered by the Party and, subject to Court approval in the case of the Monitor, the Litigation Trustee and 129, constitutes legal, valid, and binding obligations;

- iii. the terms of the Settlement Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel;
- iv. he, she or its representative fully understands each term of the Settlement Agreement and its effect; and
- v. he, she or its representative have required and consented that this Settlement Agreement and all related documents be prepared only in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés seulement en anglais.

The representations and warranties contained in the Settlement Agreement shall survive its execution and implementation.

(i) Plaintiffs' Acknowledgements

The Litigation Trustee and the Monitor hereby represent and warrant that

- i. the Creditors' Committee (as defined in the LT Order) does not object to the Litigation Trustee and the Monitor entering into this Agreement or performing any of their obligations hereunder; and
- ii. the Plaintiffs have not assigned or otherwise transferred all of or any part of the Released Claims, or all or any part of the Allowed Unsecured Claim, to any of their parents, subsidiaries, affiliated or related entities or person or entity or to any other Person.

(j) Notices

Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with the Settlement Agreement or any other report or document to be given by any of the Parties to any of the other Parties shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid as follows:

THE ESL PARTIES  
c/o Polley Faith LLP  
1300 – 80 Richmond Street W  
Toronto, ON M5h 2A4

Attention: Harry Underwood, Andrew Faith, Sandy Lockhart

Fax: 416.365.1601

Email: [hunderwood@polleyfaith.com](mailto:hunderwood@polleyfaith.com)  
[afaith@polleyfaith.com](mailto:afaith@polleyfaith.com)  
[slockhart@polleyfaith.com](mailto:slockhart@polleyfaith.com)

SEARS CANADA INC.,  
by its Court-appointed Litigation Trustee, J. Douglas Cunningham, Q.C.  
c/o Lax O'Sullivan Lissus Gottlieb LLP  
145 King Street west  
Suite 2750  
Toronto, ON M5H 1J8

Attention: Matthew P. Gottlieb

Fax: 416 598 3730

Email: [mgottlieb@lolg.ca](mailto:mgottlieb@lolg.ca)

FTI CONSULTING CANADA INC.,  
in its capacity as court-appointed Monitor in proceedings pursuant to the  
CCAA  
c/o Norton Rose Fulbright Canada LLP  
Royal Bank Plaza, South Tower  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, ON M5K 1E7

Attention: Orestes Pasparakis/Robert Frank/Evan Cobb

Fax: 416 216 3930

Email: [orestes.pasparakis@nortonrosefulbright.com](mailto:orestes.pasparakis@nortonrosefulbright.com)  
[robert.frank@nortonrosefulbright.com](mailto:robert.frank@nortonrosefulbright.com)  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

MORNEAU SHEPELL LTD.,  
in its capacity as administrator of the Sears Canada Inc. Registered  
Retirement Plan  
c/o Blake Cassels & Graydon LLP  
199 Bay Street  
Suite 4000  
Toronto ON M5L 1A9

Attention: Michael Barrack

Fax: 416 863 2653

Email: [michael.barrack@blakes.com](mailto:michael.barrack@blakes.com)

1291079 ONTARIO LIMITED  
c/o Sotos LLP  
180 Dundas Street West

Suite 1200  
Toronto, ON M5G 1Z8

Attention: David Sterns  
Fax: 416 977 0717  
Email: [dsterns@sotosllp.com](mailto:dsterns@sotosllp.com)

and

c/o Blaney McMurtry LLP  
2 Queen Street East  
Suite 1500  
Toronto, ON M5C 3G5

Attention: Lou Brzezinski  
Fax: 416 594 5084  
Email: [lbrzezinski@blaney.com](mailto:lbrzezinski@blaney.com)

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Toronto time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(k) Further Assurances

The Parties all covenant and agree:

- i. to pursue as promptly as practicable court approval of the Settlement Agreement and the granting of the Approval Order in an expedited and commercially reasonable fashion;
- ii. that the Monitor will amend the CCAA Plan (as provided herein), hold a meeting of creditors, if approved by the requisite majority of creditors, seek court sanction of the CCAA Plan, and (if approved by the Court) implement the CCAA Plan; and
- iii. to execute any and all documents and perform any and all acts required by the CCAA Plan and the Settlement Agreement, including any consent, approval or waiver requested by the Parties, acting reasonably.



## (l) Successors and Assigns

This Settlement Agreement shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person (including any subsequent Litigation Trustee and/or Pension Plan Administrator) named or referred to in this Settlement Agreement.

## (m) Class Proceedings Levy

To the extent that any levy is payable to a class proceedings funding organization such as the Law Foundation of Ontario Class Proceedings Fund or the Fonds d'aide aux actions collectives (Quebec), such levy shall be calculated based on, and paid out of, the portion of the Settlement Funds allocated to the 129 Action. For greater certainty, the Released Parties shall not be required to pay any additional sum to the Plaintiffs in excess of the Settlement Funds in order to satisfy any class proceedings funding organization levy.

## (n) Plaintiffs' Capacity

The Parties acknowledge and agree that the Monitor and the Litigation Trustee have entered into this agreement in their capacities as court-appointed monitor and court-appointed litigation trustee of Sears, that the Pension Administrator has entered into this agreement in its capacity as an administrator appointed under the *Pension Benefits Act* (Ontario) and not in their personal or corporate capacities and that the Monitor, the Litigation Trustee, the Pension Administrator shall have no personal or corporate liability in connection with this Agreement.

**11. TERMINATION**

## (a) No Termination Rights Regarding Class Counsel Fees

The refusal of any competent court to approve, or uphold in the case of an appeal, any request by Class Counsel for fees shall not be grounds to terminate this Settlement Agreement.

## (b) Impact of Non-Approval and/or Termination

If the conditions precedent set out in Section 7 of this Settlement Agreement are not met or waived, or if the Settlement Agreement terminates or is terminated in accordance with its terms prior to the Effective Date, then

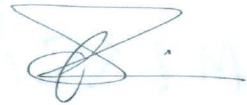
- i. the Settlement Agreement and Minutes of Settlement shall be null and void in all respects (subject to any survival provisions);
- ii. nothing contained in the Settlement Agreement or Minutes of Settlement, and no act taken in preparation of the consummation of the Settlement Agreement or the CCAA Plan, shall
  - a. constitute or be deemed to constitute a waiver or release of any Claims or any defences thereto, by or against any of the Parties or any other Person;
  - b. prejudice in any manner the rights of any of the Parties or any other Person; or
  - c. constitute an admission of any sort by any of the Parties, or any other Person;
- iii. the Parties and any other Person affected by the Settlement Agreement or the Minutes of Settlement will be restored to their respective positions prior to the execution of the Settlement Agreement and the Minutes of Settlement;
- iv. subject to any survival provisions herein, the Settlement Agreement and the Minutes of Settlement will have no further force and effect and no effect on the rights of the Parties and any other Person affected by the Settlement Agreement or the Minutes of Settlement;
- v. neither the Minutes of Settlement nor the Settlement Agreement will be introduced into evidence or otherwise referred to in any litigation or proceeding against the Released Parties;

- vi. the provisions of this section, and sections 1(a), 1(b), 8(a)(ii), 8(b), and 10(a)-10(l) of the Settlement Agreement shall survive termination and shall continue in full force and effect;

IN WITNESS OF WHICH the Parties have executed this Settlement Agreement.

[signature pages follow]

**SEARS CANADA INC.**, by J. Douglas Cunningham, Q.C., in his capacity as court-appointed litigation trustee and not in his personal capacity and without personal liability



Per: \_\_\_\_\_  
Name: J D Cunningham  
Title: Litigation Trustee

I have the authority to bind the Corporation.

**FTI CONSULTING CANADA INC.**, in its capacity as court-appointed monitor of Sears Canada Inc., and not in its personal or corporate capacity and without personal or corporate liability

Per: \_\_\_\_\_  
Name: Paul Bishop  
Title: Senior Managing Director

I have the authority to bind the Corporation

**MORNEAU SHEPELL LTD.**, in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan and not in its personal or corporate capacity and without personal or corporate liability

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

I have the authority to bind the Corporation.

\_\_\_\_\_

**SEARS CANADA INC.**, by J. Douglas  
Cunningham, Q.C., in his capacity as court-  
appointed litigation trustee and not in his  
personal capacity and without personal liability

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

I have the authority to bind the Corporation.

**FTI CONSULTING CANADA INC.**, in its  
capacity as court-appointed monitor of Sears  
Canada Inc., and not in its personal or  
corporate capacity and without personal or  
corporate liability

A handwritten signature in black ink on a light green rectangular background. The signature reads "Paul Bishop" in a cursive script.

Per:  
Name: Paul Bishop  
Title: Senior Managing Director

I have the authority to bind the Corporation

**MORNEAU SHEPELL LTD.**, in its capacity as  
administrator of the Sears Canada Inc.  
Registered Retirement Plan and not in its  
personal or corporate capacity and without  
personal or corporate liability

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

I have the authority to bind the Corporation.

---

**SEARS CANADA INC.**, by J. Douglas Cunningham, Q.C., in his capacity as court-appointed litigation trustee and not in his personal capacity and without personal liability

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

I have the authority to bind the Corporation.

**FTI CONSULTING CANADA INC.**, in its capacity as court-appointed monitor of Sears Canada Inc., and not in its personal or corporate capacity and without personal or corporate liability

Per: \_\_\_\_\_  
Name: Paul Bishop  
Title: Senior Managing Director

I have the authority to bind the Corporation

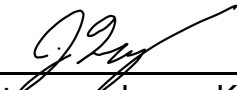
**MORNEAU SHEPELL LTD.**, in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan and not in its personal or corporate capacity and without personal or corporate liability



Per: \_\_\_\_\_  
Name: Hamish Dunlop  
Title: Managing Principal

I have the authority to bind the Corporation.

**1291079 ONTARIO LIMITED**

Per:   
Name: \_\_\_\_\_ James Kay  
Title: President

As Representative of the Plaintiff I have the authority to bind the corporation and all members of the Class of Plaintiffs.

**EDWARD LAMPERT, FOR HIMSELF AND  
ESL INVESTMENTS, INC; BY MR.  
LAMPERT ON BEHALF OF ESL  
INVESTMENTS, INC FOR RBS PARTNERS,  
LP; BY MR. LAMPERT AS  
REPRESENTATIVE OF THE MANAGING  
MEMBER OF CRK PARTNERS, LLC, ESL  
INVESTORS, LLC, AND RBS INVESTMENT  
MANAGEMENT, LLC; BY MR. LAMPERT  
ON BEHALF OF RBS PARTNERS, LP FOR  
ESL PARTNERS LP, SPE MASTER I, LP,  
SPE I PARTNERS, LP; AND BY MR.  
LAMPERT ON BEHALF OF RBS  
INVESTMENT MANAGEMENT FOR ESL  
INSTITUTIONAL PARTNERS, LP**

\_\_\_\_\_  
Per: Edward S Lampert  
I am authorized to bind the corporations,  
partnerships and/or general partnerships

**1291079 ONTARIO LIMITED**

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

Name:

Title:

As Representative of the Plaintiff I have the authority to bind the corporation and all members of the Class of Plaintiffs.

**EDWARD LAMPERT, FOR HIMSELF AND  
ESL INVESTMENTS, INC; BY MR.  
LAMPERT ON BEHALF OF ESL  
INVESTMENTS, INC FOR RBS PARTNERS,  
LP; BY MR. LAMPERT AS  
REPRESENTATIVE OF THE MANAGING  
MEMBER OF CRK PARTNERS, LLC, ESL  
INVESTORS, LLC, AND RBS INVESTMENT  
MANAGEMENT, LLC; BY MR. LAMPERT  
ON BEHALF OF RBS PARTNERS, LP FOR  
ESL PARTNERS LP, SPE MASTER I, LP,  
SPE I PARTNERS, LP; AND BY MR.  
LAMPERT ON BEHALF OF RBS  
INVESTMENT MANAGEMENT FOR ESL  
INSTITUTIONAL PARTNERS, LP**



Per: Edward S Lampert

I am authorized to bind the corporations,  
partnerships and/or general partnerships



Schedule "A"

**FULL AND FINAL RELEASE**

**IN CONSIDERATION OF** payment to the **PLAINTIFFS** (as defined below) in the full and total amount of **CDN \$22,500,000.00 (TWENTY TWO MILLION FIVE HUNDRED THOUSAND CANADIAN DOLLARS)**, which is hereby directed to be paid to **FTI CONSULTING CANADA INC. in its capacity as Court-appointed Monitor of Sears Canada Inc. in proceedings pursuant to the *Companies' Creditors Arrangement Act, RSC 1985, c c-36*** (the "**MONITOR**") in trust for the PLAINTIFFS (defined below), the receipt of which is acknowledged, and in consideration of the dismissal without costs and with prejudice of the following actions:

- a) Ontario Superior Court of Justice (Commercial List) at Toronto, Court File No. CV-18-00611219-00CL, wherein the **MONITOR** is the plaintiff and ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, Edward S. Lampert, Sears Holdings Corporation, William Harker, and William Crowley are the defendants;
- b) Ontario Superior Court of Justice (Commercial List) at Toronto, Court File No. CV-18-00611217-00CL, wherein **MORNEAU SHEPELL LTD., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan ("PENSION ADMINISTRATOR")** is the plaintiff and ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, Edward S. Lampert, Sears Holdings Corporation, William Harker, William Crowley, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney, and Douglas Campbell are the defendants;
- c) Ontario Superior Court of Justice (Commercial List) at Toronto, Court File No. CV-18-00611214-00CL, wherein **SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas Cunningham, Q.C.** (the "**LITIGATION TRUSTEE**") is the plaintiff and ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, Edward S. Lampert, Sears Holdings Corporation, William Harker, William Crowley, Donald Ross, Ephraim J. Bird, Deborah Rosati, R. Raja Khanna, James McBurney, and Douglas Campbell are the defendants; and

- d) Ontario Superior Court of Justice (Commercial List) at Toronto, Court File No. CV-19-617792-00CL, wherein **1291079 ONTARIO LIMITED** ("**129**") is the representative plaintiff in a class proceeding on behalf of all Sears Hometown Dealer stores operating under a Dealer Agreement with Sears Canada Inc. at any time on or after July 5, 2011 (the "**CLASS**"), and Sears Canada Inc., ESL Investments Inc., Sears Holdings Corporation, William R. Harker, William C. Crowley, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney, and Douglas Campbell are the defendants;

(collectively, the "**ACTIONS**")

the **MONITOR**, the **PENSION ADMINISTRATOR**, the **LITIGATION TRUSTEE**, and **129** (collectively, the "**PLAINTIFFS**") on behalf of themselves and their respective heirs, executors, administrators, predecessors, representatives, successors, assigns, subsequent administrators, subsequent Court-appointed litigation trustees, subsequent Court-appointed monitors, parent or other related companies, subsidiaries and affiliates, along with the officers, directors, employees, shareholders, agents, successors and assigns of all such persons and entities and **129** on behalf of all members of the **CLASS** and their respective heirs, executors, administrators, predecessors, representatives, successors, assigns, parent or other related companies, subsidiaries and affiliates, along with the officers, directors, employees, shareholders, agents, successors and assigns of all such persons and entities (collectively, the "**RELEASORS**"), do hereby release and forever discharge **EDWARD S. LAMPERT, ESL INVESTMENTS, INC., ESL PARTNERS, LP, ESL INSTITUTIONAL PARTNERS, LP, SPE MASTER I, LP, SPE I PARTNERS, LP, ESL INVESTORS, LLC, RBS PARTNERS, LP, CRK PARTNERS, LLC, RBS INVESTMENT MANAGEMENT, LLC**, (collectively, the "**ESL Parties**"), and, as to any of the foregoing persons or entities, any current or former officer, director, manager, employee, attorney, agent, representative, affiliate, of any such person or entity, as well as the respective heirs, executors, administrators, predecessors, representatives, successors, and assigns of any of the foregoing (collectively, the "**Related Parties**", and together with the ESL Parties are collectively the "**RELEASEES**") from any and all actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, proceedings, complaints, claims, demands and rights which the **RELEASORS** ever had, now have, or may in the future have against the **RELEASEES**, for any losses, injuries, damages, cause, matter or thing whatsoever, whether at law or in equity or under any statute, whether anticipated or unanticipated, that were set out or could have been set out in

the **ACTIONS**, including without restricting the generality of the above, all claims and allegations whatsoever against the **RELEASEES** resulting from, arising out of or connected, directly or indirectly, with (a) the ESL Parties' roles as shareholders of, or consultants and nominators of directors to, Sears Canada Inc. from the beginning of time up to the date of this release, (b) the business, operations, management, and other affairs of Sears Canada Inc. (even if allegedly undertaken in an ESL Party's capacity as an employee, officer, director, or consultant of another corporation or entity), and (c) the consideration and approval of, and the payment by Sears Canada Inc. of, a dividend of \$5 per share in 2013.

**IT IS UNDERSTOOD AND AGREED** that the claims of intentional wrongdoing against Mr. Lampert were withdrawn prior to the Full and Final Release, and the Full and Final Release is made on the basis that none of the allegations against Mr. Lampert have been proven; moreover, the above-described consideration is not an admission of liability on the part of the **RELEASEES** and such liability is expressly denied.

**IT IS FURTHER UNDERSTOOD AND AGREED** that the **RELEASORS** will not make any claim or take any proceeding against any person, corporation, partnership or other entity which may or does claim contribution or indemnity by statute or otherwise from the **RELEASEES** or their administrators, assigns, servants and agents with respect to any of the matters to which this Full and Final Release applies;

**IT IS FURTHER UNDERSTOOD AND AGREED** that if a **RELEASOR** makes any claim or takes any proceeding in violation of the paragraphs above, this Full and Final Release may be raised as an estoppel to any such claim or proceeding, and each **RELEASOR** undertakes and agrees to indemnify the **RELEASEES** in respect of any defence costs incurred by or on behalf of the same in relation to such claim or proceeding made or taken by such **RELEASOR**.

**IT IS FURTHER UNDERSTOOD AND AGREED** that this Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the **RELEASORS** against the Releasees with respect to matters released by this Full and Final Release. This Full and Final Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by the **RELEASORS** in any subsequent proceeding.

**THE RELEASORS** represent and warrant that they are authorized and entitled to sign this Full and Final Release, and that they own and have not sold, pledged, hypothecated, assigned or transferred the claims being released herein.

**IT IS FURTHER UNDERSTOOD AND AGREED** that the invalidity or unenforceability of any particular term of this Full and Final Release will not affect or limit the validity or enforceability of the remaining terms.

**IT IS FURTHER UNDERSTOOD AND AGREED** that the **RELEASORS** are satisfied with the information provided and have no outstanding requests for information.

**IT IS ACKNOWLEDGED AND CONFIRMED** that the **RELEASORS** have received, or have had the opportunity to receive, independent legal advice from counsel of their choice with respect to the terms of the settlement of the **ACTIONS**, including the terms of this Full and Final Release.

**IT IS FURTHER ACKNOWLEDGED AND CONFIRMED** that the **RELEASORS** have read this Full and Final Release carefully and have signed it voluntarily and freely and without any form of duress being exerted by the **RELEASEES**, or anyone acting on their behalf, and with the express purpose of making full and final compromise, adjustment and settlement with respect to all of the matters to which this Full and Final Release applies.

**IT IS FURTHER UNDERSTOOD AND AGREED** that capitalized terms not otherwise defined in this Full and Final Release shall have the meaning attributed to those terms in the Settlement and Release Agreement between the Plaintiffs and the Released Parties dated as of September [14], 2020.

This Full and Final Release shall be governed and construed by the laws of the Province of Ontario and the laws of Canada applying therein. Any questions or disputes arising out of this Full and Final Release shall be determined by the Ontario Superior Court of Justice (Commercial List) at Toronto.

The **RELEASORS** acknowledge and agree that no representations or promises have been made to or relied upon by them or by any person acting for or on their behalf in connection with the subject matter of this Full and Final Release which is not specifically set forth herein or in the Settlement and Release Agreement between the parties. All representations and promises made by any party to another, whether in writing or orally are understood by the parties to be merged in this Full and Final Release and the Settlement and Release Agreement. This Full and Final

Release shall further be binding upon and shall inure to the benefit of the parties, their respective heirs, beneficiaries, personal representatives, successors, and assigns.

**IN WITNESS WHEREOF**, the **RELEASORS** have executed this Full and Final Release on the date written below.

**DATED** at \_\_\_\_\_, Ontario, this \_\_\_\_\_ day of September 2020.

**FTI CONSULTING CANADA INC., in its capacity as Court-appointed monitor of Sears Canada Inc., and not in its personal or corporate capacity and without personal or corporate liability**

\_\_\_\_\_

\_\_\_\_\_  
Name: Paul Bishop  
Title: Senior Managing Director

*I have authority to bind the Monitor.*

**MORNEAU SHEPELL LTD., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan, and not in its personal or corporate capacity and without personal or corporate liability**

\_\_\_\_\_

\_\_\_\_\_  
Name: Hamish Dunlop  
Title: Managing Principal

*I have authority to bind the Pension Administrator.*

**SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas Cunningham, Q. C., and not in his personal capacity and without personal liability**

---

Name: J. Douglas Cunningham, Q.C.  
Title: Litigation Trustee

*I have authority to bind the corporation.*

**1291079 ONTARIO LIMITED**

---

Name: James Kay  
Title: President

*I have authority to bind the corporation and the Class*

Schedule "B"

[Insert draft order]

Court File No. CV-17-11846-00CL  
Court File No. CV-18-611214-00CL  
Court File No. CV-18-611217-00CL  
Court File No. CV-18-611219-00CL  
Court File No. CV-19-617792-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE HAINEY )  
)  
), THE )  
DAY OF ), 2020

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS  
CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS  
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., 9845488 CANADA INC.,  
INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING  
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC.,  
10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531  
CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

---

SEARS CANADA INC., by its Court-appointed Litigation Trustee,  
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
ESL INSTITUTIONAL PARTNERS, LP, EDWARD LAMPERT, EPHRAIM J. BIRD,  
DOUGLAS CAMPBELL, WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA,  
JAMES MCBURNEY, DEBORAH ROSATI, and DONALD ROSS,  
and SEARS HOLDINGS CORP.

Defendants

---

MORNEAU SHEPELL LTD. in its capacity as administrator of the  
Sears Canada Inc. Registered Retirement Pension Plan

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER,  
WILLIAM CROWLEY, DONALD CAMPBELL ROSS, EPHRAIM J. BIRD,



DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL  
and SEARS HOLDINGS CORPORATION

Defendants

-----  
 FTI CONSULTING CANADA INC., in its capacity as Court-appointed monitor in proceedings  
 pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
 ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, SEARS HOLDINGS  
CORPORATION, WILLIAM HARKER and WILLIAM CROWLEY

Defendants

-----  
 1291079 ONTARIO LIMITED

Plaintiff

- and -

SEARS CANADA INC., SEARS HOLDING CORPORATION, ESL INVESTMENTS INC.,  
 WILLIAM C. CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL ROSS,  
 EPHRAIM J. BIRD, DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES MCBURNEY  
 and DOUGLAS CAMPBELL

Defendants

**ORDER  
 (APPROVAL ORDER)**

**THIS MOTION** made by Sears Canada Inc. ("**Sears**") by its Court-Appointed Litigation Trustee, J. Douglas Cunningham, Q.C. (the "**Litigation Trustee**") in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 (the "**CCAA Proceedings**"), FTI Consulting Canada Inc. in its capacity as Court-appointed monitor (the "**Monitor**"), Morneau Shepell Ltd., in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan (the "**Pension Administrator**") and 1291079 Ontario Limited ("**129**" and collectively with the Monitor, the Litigation Trustee and the Pension Administrator, the "**Plaintiffs**") for an order approving the settlement agreement between the Plaintiffs and Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL Institutional Partners, LP, SPE Master I, LP, SPE I Partners LP, ESL Investors, LLC, RBS Partners, LP, CRK Partners, LLC, RBS Investment Management, LLC, (collectively, the "**ESL Parties**" and, as a group, Edward S. Lampert, ESL Investments, Inc., ESL Partners, LP, ESL

Institutional Partners, LP, SPE Master I, LP, and SPE I Partners, are the “**Named ESL Parties**”) and for an order releasing claims against the Named ESL Parties and barring claims against the ESL Parties as more particularly described below was heard this day via videoconference.

**ON READING** the Motion Record of the Plaintiffs, the 39th Report of the Monitor dated ●, 2020 (the “**Thirty-Ninth Report**”), and the Supplementary Motion Record of 129, and on hearing the submissions of counsel for the Plaintiffs and the Defendants, no one appearing for any other party although duly served and no one appearing nor any representations having been made on behalf of any class member of the 129 Settlement Class (as hereinafter defined) despite notice of this hearing having been duly given to class members:

#### **Sufficiency of Service and Definitions**

1. **THIS COURT ORDERS** that the time for service and manner of service of the Notice of Motion and Motion Record of the Plaintiffs, the Thirty-Ninth Report, and the Supplementary Motion Record of 129 on any Person are, respectively, hereby abridged and validated, and any further service thereof is hereby dispensed with so that this Motion was properly returnable ●, 2020 in all proceedings set out in the styles of cause above.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning attributed to those terms in the settlement and release agreement between the Plaintiffs and the ESL Parties dated ●, 2020, (the “**Settlement Agreement**”).

#### **Approval of Settlement Agreement**

3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved, and the parties thereto are hereby bound by this Order and by those terms of the Settlement Agreement that are conditional upon the granting of this Order and are authorized and directed to comply with their obligations thereunder.
4. **THIS COURT ORDERS** that Sears is hereby authorized to transfer the Allowed SHC Unsecured Claim (as defined in the Thirty-Ninth Report) to ESL Investments, Inc. or to release the Allowed SHC Unsecured Claim, in each case in accordance with the terms of the Settlement Agreement, and any such transfer or release is hereby approved.
5. **THIS COURT ORDERS** that the Monitor shall be exclusively authorized to take any steps on behalf of all of the Plaintiffs to comply with the obligations set out in the Settlement Agreement in respect of the assignment or release of the Allowed SHC Unsecured Claims or the remittance

to ESL Investments, Inc. (or its designee) of any distributions, dividends, or other recovery in respect of the Allowed SHC Unsecured Claims or otherwise

### **Release**

6. **THIS COURT ORDERS** that in accordance with the terms and conditions of the Settlement Agreement as of the Effective Date the Released Claims are irrevocably, absolutely, and unconditionally fully, finally, and forever released, remised and discharged.

7. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each class member in Court File No. CV-19-00617792-00CL (the “**129 Settlement Class**”) 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 the action in Court File No. CV-19-00617792-00CL.

8. **THIS COURT ORDERS** that the notices of settlement approval hearing provided to the 129 Settlement Class on August 12, 2020 and September 14, 2020 and the method of dissemination of such notices are hereby approved *nunc pro tunc*.

9. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interest of the 129 Settlement Class.

10. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.

### **Bar Orders**

11. **THIS COURT ORDERS** that no person not party to the Settlement Agreement (the “**Non-Parties**”) shall 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 other person, any action, suit, cause of action, claim or demand against any of the ESL Parties (or any other person who may claim contribution or indemnity from any of the ESL Parties) in respect of the Released Claims or any claims related to the subject matter of the Actions. All claims for contribution or indemnity or other claims over (whether asserted or unasserted, tolled or not tolled) relating to or arising from the Released Claims or any claims related to the subject matter of the Actions which were or could have been brought in any of the Actions or in a

separate proceeding against the ESL Parties are barred, extinguished, prohibited and enjoined by this Order.

12. **THIS COURT ORDERS** that all Persons (regardless of whether or not such Persons are creditors or claimants), including the 129 Settlement Class, Sears Canada Inc., the Litigation Trustee, the Monitor, the Pension Administrator, the Pension Benefits Guarantee Fund (Ontario), the beneficiaries of the Sears Canada Inc. Registered Retirement Plan, the ESL Parties, and all beneficiaries of any of the foregoing, shall be permanently and forever barred, estopped, stayed and enjoined, as of the Effective Date, from:

- a) commencing, conducting, pursuing, instituting, intervening in, asserting, advancing, or continuing in any manner, directly or indirectly, any action or other related proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) which constitutes a Released Claim;
- b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, damages, or order in respect of a Released Claim, other than the enforcement of the Settlement Agreement;
- c) making, asserting, pursuing, instituting, intervening in, advancing, commencing, conducting or continuing in any manner, directly or indirectly, any Released Claim, including for contribution or indemnity or other relief, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes or asserts, or might reasonably be expected to make or assert, such a claim, in any manner or forum, against one or more of the ESL Parties;
- d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the ESL Parties or their property in respect of a Released Claim; or
- e) taking any actions to interfere with the implementation or consummation of the Settlement Agreement.

13. **THIS COURT ORDERS** that the bar order and injunctions set out herein and in the Settlement Agreement shall not apply to the obligations of any Person in respect of this Order and the Settlement Agreement.

14. **THIS COURT ORDERS** that any plan of compromise or arrangement of Sears Canada Inc. or any order sanctioning such plan of compromise or arrangement shall be supplementary to, and shall not derogate from, the releases and injunctions set out in this Order.

15. **THIS COURT ORDERS** that, notwithstanding:

- a) the pendency of these proceedings;
- b) any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of any of Sears Canada Inc. or any of its affiliates and any bankruptcy order issued pursuant to any such applications; and
- c) any assignment in bankruptcy made in respect of any of Sears Canada Inc. or any of its affiliates,

the settlement approved pursuant to this Order and the releases and bar orders shall be binding on any trustee in bankruptcy that may be appointed in respect of any of Sears Canada Inc. or any of its affiliates and shall not be void or voidable by creditors of any of the Applicants in the proceedings of Sears Canada Inc. or any of its affiliates under the Companies' Creditors Arrangement Act (Canada), nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the Bankruptcy and Insolvency Act (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. **THIS COURT ORDERS** that the releases, bar orders and injunctions set out herein shall be conditional upon the completion of the settlement set out in the Settlement Agreement.

### **Recognition and Enforcement**

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body (collectively, "**Bodies**") having jurisdiction in Canada or in the United States or in any other jurisdiction to give effect to this order and to assist the Plaintiffs,

the Litigation Trustee (as an officer of this Court) and the Monitor (as an Officer of this Court) and their respective agents in carrying out the terms of this order. All Bodies are hereby respectfully requested to make such orders and to provide such assistance to the Plaintiffs, the Litigation Trustee (as an officer of this Court) and the Monitor (as an officer of this Court) as may be necessary or desirable to give effect to this order or to assist the Plaintiffs, the Litigation Trustee (as an officer of this Court) and the Monitor (as an officer of this Court) and their respective agents in carrying out the terms of this order.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC. *et al.*

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

SEARS CANADA INC. -and-  
Plaintiff

Court File No. CV-18-00611214-00CL  
ESL INVESTMENTS INC. *et al.*  
Defendants

MORNEAU SHEPELL LTD. -and-  
Plaintiff

Court File No. CV-18-00611217-00CL  
ESL INVESTMENTS INC. *et al.*  
Defendants

FTI CONSULTING CANADA INC. -and-  
Plaintiff

Court File No. CV-18-00611219-00CL  
ESL INVESTMENTS INC. *et al.*  
Defendants

1291079 ONTARIO LIMITED -and-  
Plaintiff

Court File No. CV-19-00617792-00CL  
SEARS CANADA INC. *et al.*  
Defendants

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT TORONTO

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**SETTLEMENT AND RELEASE AGREEMENT**

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Toronto Ontario M5H 2A4

Harry Underwood  
Andrew Faith

Lawyers for the ESL Parties

N THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA  
INC., *et al.*

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SUPPLEMENT TO THE THIRTY-NINTH REPORT TO  
THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

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Monitor