



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: SEARS HOLDINGS
CORPORATION STOCKHOLDER
AND DERIVATIVE LITIGATION

Consolidated
C.A. No. 11081-VCL

**STIPULATION AND AGREEMENT OF
SETTLEMENT, COMPROMISE AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise and Release (the “Stipulation”) is entered into between and among the following parties, by and through their respective counsel, in the above-captioned, consolidated derivative action (the “Action”): (i) plaintiffs Ryan Flanagan, Jacob Rossof, John Solak, and Shiva Stein (collectively, “Plaintiffs”), individually and derivatively on behalf of Sears Holdings Corporation; (ii) defendants Cesar L. Alvarez, Paul G. DePodesta, Kunal S. Kamlani, William C. Kunkler III, Edward S. Lampert, Steven T. Mnuchin, Ann N. Reese, and Thomas J. Tisch (collectively, the “Individual Defendants”); ESL Investments Inc. (“ESL”), Seritage Growth Properties (“Seritage”), Fairholme Capital Management, L.L.C. and Fairholme Funds, Inc. (collectively, “Fairholme,” and with the Individual Defendants, ESL, and Seritage, “Defendants”); and (iii) Nominal Defendant Sears Holdings Corporation (“Sears,” and together with Plaintiffs and Defendants, the “Parties”). This Stipulation sets forth the terms and conditions of the settlement and resolution of the Action (the “Settlement”), and is intended by the Parties to fully, finally and forever resolve, discharge and settle all Released Claims (as defined below) as against the Released

Parties (as defined below), subject to the approval of the Court of Chancery of the State of Delaware (the “Court”).

WHEREAS:

A. On November 7, 2014, Sears announced that it was exploring the potential monetization of a portion of its owned real estate, through a potential sale-leaseback transaction, with the selected properties to be sold to a newly-formed real estate investment trust (“REIT”).

B. On or about November 10, 2014, Plaintiff Jacob Rossoff made a demand to inspect certain books and records of Sears pursuant to 8 *Del. C.* § 220, and Sears produced documents in response to such demand (the “Section 220 Production”).

C. On April 1, 2015, Sears announced that it was proceeding with the transaction and began publicly filing with the U.S. Securities and Exchange Commission (the “SEC”) the documents necessary to commence and complete a rights offering by Seritage to finance, in part, the transaction (the “Rights Offering”). To that end, Sears caused Seritage, a REIT formed by Sears, to file a registration statement on Form S-11 with the SEC (together with all amendments thereto, the “Registration Statement”) setting forth the terms of a potential transaction between Seritage and Sears (the “Seritage Transaction”), as well as the Rights Offering. Through the Rights Offering, each stockholder of Sears was

given the right to purchase an interest in Seritage economically proportionate to the interest the stockholder owned in Sears at the time the Rights Offering commenced. The exercise price of these rights was the same for all stockholders.

D. Between May 29, 2015 and June 19, 2015, Plaintiffs filed complaints in the Court asserting direct and derivative claims against Defendants relating to the Seritage Transaction and/or the Rights Offering: *Solak v. Lampert et al.*, C.A. No. 11081-VCL (filed May 29, 2015); *Stein v. Lampert et al.*, C.A. No. 11173-VCL (filed June 18, 2015); *Rossof v. Lampert et al.*, C.A. No. 11178-VCL (filed June 19, 2015); *Flanagan v. Lampert et al.*, C.A. No. 11180-VCL (filed June 19, 2015) (the “Original Complaints”). The Original Complaints alleged that ESL and members of Sears’s Board of Directors breached fiduciary duties to stockholders in connection with the Seritage Transaction and that certain other Defendants aided and abetted such breaches.

E. Between May 2015 and June 2015, the parties to the *Solak* action engaged in expedited discovery. After entering into a confidentiality stipulation which the Court approved on June 19, 2015, certain Defendants produced certain non-public documents to Plaintiffs related to the Seritage Transaction, including, among other things, minutes of meetings of Sears’s Board of Directors and data regarding Sears’s real estate assets (the “Expedited Production”).

F. On June 9, 2015, Seritage filed a final prospectus concerning the Seritage Transaction and the Rights Offering.

G. On July 7, 2015, Sears announced that the Seritage Transaction and the Rights Offering had closed, with approximately 97% of the rights having been exercised.

H. Pursuant to the Seritage Transaction, Sears sold to Seritage 235 Sears- and Kmart-branded stores, along with Sears's 50 percent interests in joint ventures with each of Simon Property Group, Inc., General Growth Properties, Inc., and The Macerich Company, which joint ventures together hold an additional 31 Sears properties.

I. On July 28, 2015, the Court entered an Order for Consolidation and Leadership consolidating the actions filed by Plaintiffs into the Action and appointing as Co-Lead Counsel the law firms of Labaton Sucharow LLP, Girard Gibbs LLP, and Robbins Arroyo LLP (collectively, "Plaintiffs' Co-Lead Counsel").

J. On October 14, 2015, Plaintiffs filed a Verified Consolidated Stockholder Derivative Complaint (the "Consolidated Complaint"), which incorporated information from documents that Plaintiffs had obtained through the Section 220 Production and the Expedited Production, as well as other investigation conducted by Plaintiffs' Co-Lead Counsel. The Consolidated

Complaint asserted derivative claims on behalf of Sears challenging, among other things, the consideration paid to Sears in the Seritage Transaction, the valuation of the stores sold in connection with the Seritage Transaction, and the process relating to the foregoing. The Consolidated Complaint alleged that Mr. Lampert and ESL breached their fiduciary duties as alleged controlling stockholders, that the other Individual Defendants breached their fiduciary duties, and that Seritage and Fairholme aided and abetted these alleged breaches. The Consolidated Complaint did not assert any direct claims on behalf of Sears stockholders, as Plaintiffs and their counsel concluded that claims challenging the Seritage Transaction are properly pleaded only as derivative claims.

K. Beginning in January 2016, certain of the Parties engaged in arm's-length discussions to assess whether a settlement of the Action could be achieved. On January 12, 2016, counsel for certain of the Parties met in person in New York City to discuss the allegations set forth in the Consolidated Complaint and Defendants' defenses. Subsequently, the Parties entered into a series of stipulations, approved by the Court, deferring Defendants' date to respond to the Consolidated Complaint in order to allow the Parties to explore their respective settlement positions.

L. In connection with such discussions, certain Defendants produced on a rolling basis additional documents to Plaintiffs (the "Additional Productions"),

Plaintiffs retained commercial real estate industry and valuation and appraisal experts to review such documents and evaluate the fairness of the Seritage Transaction, and counsel for Plaintiffs and certain Defendants held a number of in-person and telephonic meetings. In connection with the Parties' discussions, on May 2, 2016, Plaintiffs sent Defendants a confidential settlement demand. On May 3, 2016, Plaintiffs' Co-Lead Counsel and their valuation experts met with counsel for certain of the Defendants in New York City, to further discuss the Parties' respective positions.

M. On July 12, 2016, Plaintiffs filed a Verified Consolidated Amended Stockholder Derivative Complaint (the "Consolidated Amended Complaint"), which incorporated information that Plaintiffs had obtained through the Additional Productions, as well as the information previously obtained through the Section 220 Production and the Expedited Production and the investigation conducted by Plaintiffs' Co-Lead Counsel.

N. During the summer of 2016, certain Parties continued to explore settlement and scheduled a mediation with the Honorable Layn R. Phillips (Ret.) ("Judge Phillips"), a former United States District Court Judge. Certain Parties submitted mediation statements on July 15, 2016, and on August 9, 2016, Plaintiffs' Co-Lead Counsel, certain Defendants and their counsel, and certain of Defendants' insurance carriers and their counsel participated in an in-person

mediation before Judge Phillips. The mediation session ended without an agreement being reached.

O. Between August 9, 2016 and September 23, 2016, Plaintiffs' Co-Lead Counsel, certain Defendants and their counsel, and certain of Defendants' insurance carriers and their counsel continued to engage in settlement discussions with the assistance of Judge Phillips.

P. On September 23, 2016, Plaintiffs' Co-Lead Counsel, certain Defendants and their counsel, and certain of Defendants' insurance carriers and their counsel participated in a second in-person mediation before Judge Phillips.

Q. Following the second mediation, Judge Phillips made a recommendation for settlement of the Action for a total payment of \$40,000,000 to Sears (inclusive of any attorneys' fees and expenses that would be sought by Plaintiffs' Counsel as a result of an approved settlement) to be paid by Defendants and/or their insurers. The Parties subsequently accepted the mediator's recommendation, and agreed to settle the Action on the terms set forth herein.

R. Plaintiffs, having thoroughly considered the facts and law underlying the Action, and based upon their investigation and prosecution of the Action and the mediation that led to the Settlement, and after weighing the risks of continued litigation, have determined that it is in the best interests of Sears and its stockholders that the Action be fully and finally settled in the manner and upon the

terms and conditions set forth in this Stipulation, and that these terms and conditions are fair, reasonable, and adequate to Sears and its stockholders. Plaintiffs and their counsel have concluded that claims challenging the Seritage Transaction are properly pleaded only as derivative claims.

S. Defendants, who believe they have substantial defenses to the claims alleged against them in the Action, have denied and continue to deny the allegations of wrongdoing, liability, and violation of any laws and the existence of any damages asserted in or arising from the Action, but have nevertheless concluded that further litigation in connection with the Action would be time consuming and expensive, and after weighing the costs, disruption, and distraction of continued litigation, have determined that the Action should be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

NOW THEREFORE, IT IS STIPULATED AND AGREED, by and among the Parties, through their undersigned counsel, and subject to the approval of the Court, that the Action shall be fully and finally compromised and settled, that the Released Claims shall be released as against the Released Parties, and that the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of the Settlement, as follows:

DEFINITIONS

1. In addition to the terms defined above, as used in this Stipulation, the following additional terms have the meanings specified below:

(a) “Attorneys’ Fees and Expenses Award” means the amount of attorneys’ fees and expense reimbursement awarded by the Court in response to an application by Plaintiffs’ Co-Lead Counsel, as described in paragraph 15 of this Stipulation.

(b) “Effective Date” means the first date by which all of the conditions precedent set forth in paragraph 12 of this Stipulation have been met and occurred or have been waived in writing by the Parties.

(c) “Final” with respect to the judgment approving this Settlement or any other court order means: (i) if no appeal from an order or judgment is taken, the date on which the time for taking such an appeal expires, or (ii) if any appeal is taken, the date on which all appeals, including petitions for rehearing or reargument, have been finally disposed of (whether through expiration of time to file, denial of any request for review, by affirmance on the merits or otherwise) in a manner that does not result in any material alteration of the order or judgment. Notwithstanding the foregoing, the Court’s ruling or failure to rule on any application for attorneys’ fees and expenses or any modification or reversal of the

Attorneys' Fees and Expenses Award shall not preclude any judgment approving the Settlement from becoming Final.

(d) "Final Order and Judgment" means the Final Order and Judgment of the Court, substantially in the form attached hereto as Exhibit A, approving the Settlement and dismissing the Action with prejudice without costs to any Party (except as provided in this Stipulation).

(e) "Notice" means the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing and Right to Appear, substantially in the form attached hereto as Exhibit B.

(f) "Person" means any individual, corporation, professional corporation, limited-liability company, partnership, limited partnership, limited-liability partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representative or assignees.

(g) "Plaintiffs' Counsel" means, collectively, Plaintiffs' Co-Lead Counsel, the law firms Andrews & Springer LLC, Barrack Rodos & Bacine, and Wexler Wallace LLP, and any other counsel representing Plaintiffs in the Action.

(h) "Released Claims" means all Released Defendants' Claims and all Released Plaintiffs' Claims.

(i) “Released Defendants’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), arising out of or relating to the commencement, prosecution, or settlement of the Action; provided, however, for the avoidance of doubt, the Released Defendants’ Claims shall not include the right to enforce this Stipulation or the Settlement.

(j) “Released Defendant Parties” means, whether or not each or all of the following persons or entities were named, served with process, or appeared in the Action, (i) Cesar L. Alvarez, Paul G. DePodesta, Kunal S. Kamlani, William C. Kunkler III, Edward S. Lampert, Steven T. Mnuchin, Ann N. Reese, Thomas J. Tisch, ESL Investments Inc., Seritage Growth Properties, Fairholme Capital Management, L.L.C., Fairholme Funds, Inc., and Sears Holdings Corporation; (ii) all past and present officers and directors of Sears; and (iii) for each and all of the Persons identified in the foregoing clauses (i) and (ii) (but only to the extent

such Persons are released as provided above), any and all of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, insurers, reinsurers, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited-liability companies, corporations, parents, subsidiaries, divisions, direct or indirect affiliates, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants and associates.

(k) “Released Plaintiffs’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or

contingent, including Unknown Claims (defined below), which Plaintiffs asserted in any of the Original Complaints, the Consolidated Complaint, or the Consolidated Amended Complaint, or which could have been asserted on behalf of Sears, or which Sears could have asserted directly, in any court, tribunal, forum or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, and which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, (i) the Seritage Transaction; (ii) the Rights Offering; (iii) the Registration Statement; (iv) the actions, inactions, deliberations, discussions, decisions, votes or any other conduct of any kind of any director, officer, employee, or agent of Sears relating to the Seritage Transaction, the Rights Offering, any related disclosures or non-disclosures in connection therewith (including, without limitation, the Registration Statement or any amendments or supplements thereto), or any other transaction, occurrence, fact, disclosure or non-disclosure alleged or set forth in any of the Original Complaints, the Consolidated Complaint, or the Consolidated Amended Complaint; or (v) the aiding and abetting by any other Person of any of the foregoing conduct; provided, however, for the avoidance of doubt, the Released Plaintiffs' Claims shall not include (x) the right to enforce this Stipulation or the Settlement, or (y) Sears's or any of its affiliates' rights (1) to enforce or defend the terms, covenants, or provisions of, or rights relating to, any contract or agreement with Seritage or any

of its affiliates, or (2) to bring or defend any claims or counterclaims relating to the performance of the landlord-tenant or contractual relationship between Sears or any of its affiliates, on the one hand, and Seritage or any of its affiliates, on the other hand.

(l) “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

(m) “Released Plaintiff Parties” means Plaintiffs, Plaintiffs’ Counsel, and any and all of their respective past or present family members, spouses, agents, attorneys, fiduciaries, employees, assigns, partners, corporations, direct or indirect affiliates, consultants, bankers, representatives, estates, insurers, reinsurers, and advisors.

(n) “Releases” means the releases set forth in paragraphs 5 and 6 below.

(o) “Scheduling Order” means the scheduling order to be entered pursuant to Rule 23.1 of the Rules of the Court of Chancery, substantially in the form attached hereto as Exhibit C.

(p) “Sears Stockholder(s)” means any and all persons and entities who hold of record, or beneficially own, common stock of Sears as of the close of business on the date that the Stipulation is filed with the Court.

(q) “Settlement Hearing” means a hearing required under Rule 23.1 of the Rules of the Court of Chancery, at or after which the Court will review the adequacy, fairness and reasonableness of the Settlement and determine whether to issue the Final Order and Judgment.

(r) “Unknown Claims” means any Released Claims that a Person granting a Release hereunder does not know or suspect to exist in his, her or its favor at the time of the Release, including without limitation those which, if known, might have affected the decision to enter into or object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall have expressly waived, and Sears and each of the other Sears Stockholders shall be deemed to have, and by operation of the Final Order and Judgment by the Court shall have, waived, relinquished and released any and all provisions, rights and benefits conferred by or under California Civil Code § 1542 or any law or principle of common law of the United States or any state or territory of the United States which is similar, comparable or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and Defendants acknowledge, and Sears and all other Sears Stockholders by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiffs, Defendants, Sears and all other Sears Stockholders by operation of law, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, heretofore existed or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiffs and Defendants acknowledge, and Sears and all other Sears Stockholders by operation of law shall be deemed to have acknowledged, that this waiver and the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each and all of the Parties in entering into the Stipulation and agreeing to the Settlement.

SETTLEMENT CONSIDERATION

2. In consideration of the full settlement, satisfaction, compromise and release of the Released Plaintiffs’ Claims and the dismissal with prejudice of the Action, Defendants and/or their insurers will pay the total amount of \$40,000,000 (forty million dollars) (the “Settlement Amount”) into an interest-bearing escrow account to be established by Plaintiffs’ Co-Lead Counsel (the “Escrow Account”).

The Settlement Amount shall be paid into the Escrow Account within twenty (20) calendar days of the date on which the Final Order and Judgment becomes Final.

3. Within five (5) business days of the Effective Date, Plaintiffs' Co-Lead Counsel shall cause the Settlement Amount and any and all interest earned thereon, less the costs of providing the Notice pursuant to paragraph 9, any Attorneys' Fees and Expenses Award, and any incentive awards to be paid from the Escrow Account to Sears.

4. Apart from the payment of the Settlement Amount in accordance with Paragraph 2, Defendants shall have no further monetary obligations to Plaintiffs, Plaintiffs' Counsel, or Sears in connection with the Action, the Settlement, or the Released Claims.

RELEASES

5. Upon the Effective Date, Sears, Plaintiffs, and each and every Sears Stockholder derivatively on behalf of Sears, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such only, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Defendant Parties from any and all of the Released Plaintiffs' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released

Plaintiffs' Claims against any of the Released Defendant Parties. In addition, Plaintiffs agree not to initiate, prosecute, assist in, or facilitate the prosecution of any other claims arising out of the same nucleus of operative facts giving rise to the Action.

6. Upon the Effective Date, Defendants and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such only, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Plaintiff Parties from any and all of the Released Defendants' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

SCHEDULING ORDER; STAY OF PROCEEDINGS

7. Promptly after the execution of this Stipulation, the Parties shall jointly request entry of the Scheduling Order (i) approving the form and manner of notice to Sears Stockholders of the pendency of this Action, the Settlement, and their right to object; (ii) establishing the procedure and schedule for the Court's consideration of the Settlement, dismissal of the Action with prejudice and Plaintiffs' Co-Lead Counsel's application for attorneys' fees, expenses, and

incentive awards; and (iii) staying all further proceedings in this Action except as may be necessary to implement the Settlement.

NOTICE

8. The Scheduling Order will provide that Sears shall mail, or cause to be mailed, the Notice to each Person who was a stockholder of record of Sears common stock as of the date that the Stipulation was submitted to the Court (other than Defendants) at his, her or its last known address appearing in the stock transfer records maintained by or on behalf of Sears. A copy of the Notice shall also be posted to each of the respective firm websites of Plaintiffs' Co-Lead Counsel through the Effective Date.

9. All costs of providing the Notice incurred by Sears or any of its agents ("Notice Costs") shall be reimbursed from the Escrow Account as soon as sufficient funds have been deposited into the Escrow Account pursuant to Paragraph 2. In the event that sufficient funds to reimburse Sears or its agents for the Notice Costs are not deposited into the Escrow Account, whether because the Final Order and Judgment does not become Final or otherwise, the Defendants who would otherwise have funded the Settlement Amount shall promptly reimburse Sears for the Notice Costs.

FINAL ORDER AND JUDGMENT; DISMISSAL OF THE ACTION

10. If the Court approves the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) following the Settlement Hearing as fair, reasonable, adequate and in the best interests of Sears and Sears's stockholders, the Parties shall jointly and promptly request that the Court enter the Final Order and Judgment in the Action.

11. Upon entry of the Final Order and Judgment, the Action shall be dismissed in its entirety and with prejudice, with Plaintiffs, Defendants, and Sears each to bear his, her, or its own fees, costs, and expenses, except as expressly provided in this Stipulation.

CONDITIONS OF SETTLEMENT AND TERMINATION

12. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver in writing of all of the following events:

(a) the Court has entered the Scheduling Order, substantially in the form attached hereto as Exhibit C, as required by paragraph 7 above;

(b) the Final Order and Judgment is entered by the Court without material alteration or, in the event of material alteration, such alteration is consented to by the Parties in writing;

(c) the Final Order and Judgment becomes Final;

(d) the Action is dismissed with prejudice; and

(e) the full Settlement Amount is deposited into the Escrow Account in accordance with the provisions of paragraph 2 above.

13. Plaintiffs (provided they unanimously agree) and Defendants shall each have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”), through counsel, to all other Parties hereto within thirty (30) calendar days of: (a) the Court’s final refusal to enter the Scheduling Order in any material respect; (b) the Court’s refusal to approve the Settlement or any material part thereof; (c) the Court’s refusal to enter the Final Order and Judgment in any material respect (other than as to the Attorneys’ Fees and Expenses Award) or to dismiss the Action with prejudice; or (d) the date upon which an order vacating, modifying, revising or reversing the Final Order and Judgment becomes Final. In addition, Plaintiffs shall have the right to terminate the Settlement if the Settlement Amount is not deposited into the Escrow Account in accordance with the provisions of paragraph 2 above. In addition, prior to the Effective Date, Defendants may, but are not obligated to, terminate the Stipulation and render the Settlement null and void in the event that any claim relating to the subject matter of the Action or the Seritage Transaction is commenced and prosecuted against any of the Released Parties and (subject to a motion by such Released Party(ies)) such claims are not dismissed with prejudice or stayed in deference to the Action.

14. In the event the Settlement is terminated pursuant to paragraph 13 above, then: this Stipulation and the Settlement (including the Releases given pursuant to the terms of this Stipulation) shall be cancelled and shall become null and void and of no force and effect, except as specifically provided herein; and the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Stipulation, and shall promptly agree on a new scheduling order to govern further proceedings in the Action, and all amounts in the Escrow Account shall be promptly returned to the Defendants and/or insurers who funded such amounts. In the event of such termination, this Stipulation shall not be admissible for any purpose in any proceedings before any court or tribunal and any judgments or orders entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated *nunc pro tunc*.

ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS

15. Plaintiffs' Co-Lead Counsel, on behalf of themselves and all other Plaintiffs' Counsel, intend to apply to the Court for an award of attorneys' fees and reimbursement of their litigation expenses to be paid solely from (and out of) the Settlement Amount, and from no other source (the "Fee and Expense Application"). Plaintiffs' Co-Lead Counsel intend to apply for an award of attorney's fees, inclusive of expenses, in an amount not to exceed 20 percent of the Settlement Amount. The Fee and Expense Application shall be the only petition

for attorneys' fees and expenses filed by or on behalf of Plaintiffs, Plaintiffs' Counsel, or counsel purporting to represent any other Sears stockholder in connection with the Action or the Settlement.

16. Plaintiffs' Co-Lead Counsel also intend to apply for incentive awards for each Plaintiff in an amount not to exceed \$10,000 each, payable from the fees and expenses awarded by the Court.

17. Any Attorneys' Fees and Expenses Award and/or incentive awards shall be paid from the Escrow Account to Plaintiffs' Co-Lead Counsel within five (5) business days of the Effective Date.

18. Neither Defendants nor Sears shall have any responsibility or liability whatsoever with respect to the allocation of any Attorneys' Fees and Expenses Award among Plaintiffs' Counsel, or any other counsel representing Plaintiffs or any other Sears stockholder or any other counsel asserting a right to recover any portion of the Attorneys' Fees and Expenses Award. Any dispute regarding any allocation of fees or expenses among Plaintiffs' Counsel shall have no effect on the Settlement.

19. Neither Defendants nor Sears shall be liable for or obligated to pay any fees, expenses, costs, or disbursements, or to incur any expense on behalf of, Plaintiffs, Plaintiffs' Counsel, or any counsel purporting to represent any other

Sears stockholder, directly or indirectly, in connection with the Action or the Settlement, except as expressly provided for in this Stipulation.

20. It is not a condition of this Stipulation, the Settlement, or the Final Order and Judgment that any attorneys' fees and/or expenses be awarded by the Court to Plaintiffs' Counsel. In the event that attorneys' fees and/or expenses are not awarded by the Court or are awarded in an amount that is unsatisfactory to Plaintiffs' Counsel, or in the event that an attorneys' fee and expense award is vacated or reduced on appeal, this Stipulation and the Settlement, including the effectiveness of the Releases and other obligations of the Parties under the Settlement, nevertheless shall remain in full force and effect.

COOPERATION

21. In addition to the actions specifically provided for in this Stipulation, the Parties agree to use their best efforts from the date hereof to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws, regulations or agreements, to consummate and make effective this Stipulation and the Settlement. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of the Settlement and to use their best efforts to effect the consummation of this Stipulation and the Settlement, including, but not limited to, resolving any objections raised with respect to the Settlement. Without further order of the

Court, the Parties may agree to reasonable extensions of time not expressly set by the Court in order to carry out any of the provisions of this Stipulation.

22. If, before the Court's approval of the Settlement becomes Final, any action was or is filed in any court asserting claims that are related to the subject matter of the Action, the Parties agree to take any and all necessary actions to prevent, stay, or seek dismissal of such action, and to oppose entry of any interim or final relief in any other litigation against any of the Parties that challenges the Settlement or otherwise involves a Released Claim.

STIPULATION NOT AN ADMISSION

23. It is expressly understood that neither this Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by: (i) any of the Defendants or any of the other Released Defendant Parties as to the validity of any claims, causes of action or other issues raised, or which might be or have been raised, in the Action or in any other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies any such wrongdoing or liability; or (ii) Plaintiffs as to the infirmity of any claim or the validity of any defense, or to the amount of any damages. The existence of the Stipulation, its contents or any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to,

interpreted, construed, invoked or otherwise used by any Person for any purpose in the Action or otherwise, except as may be necessary to effectuate the Settlement. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever. Notwithstanding the foregoing, any of the Released Parties may file the Stipulation or any judgment or order of the Court related hereto in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good-faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

NO WAIVER

24. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation 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 the strict performance of any and all of the provisions in this Stipulation by such other Party.

25. No waiver, express or implied, by any Party of any breach or default in the performance by any other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent or contemporaneous, under this Stipulation.

AUTHORITY

26. This Stipulation will be executed by counsel to the Parties, each of whom represents and warrants that he or she has been duly authorized and empowered to execute this Stipulation on behalf of such Party, and that it shall be binding on such Party in accordance with its terms.

SUCCESSORS AND ASSIGNS

27. This Stipulation is, and shall be, binding upon, and inure to the benefit of, the Parties and their respective agents, executors, administrators, heirs, successors and assigns; provided, however that no Party shall assign or delegate its rights or responsibilities under this Stipulation without the prior written consent of the other Parties.

BREACH

28. The Parties agree that in the event of any breach of this Stipulation, all of the Parties' rights and remedies at law, equity or otherwise, are expressly reserved.

GOVERNING LAW AND FORUM

29. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles. Any action relating to this Stipulation will be filed exclusively in the Court. Each Party: (i) consents to personal jurisdiction in any such action (but no other action) brought in the Court; (ii) consents to service of process by registered

mail upon such Party and/or such Party's agent; and (iii) waives any objection to venue in the Court and any claim that Delaware or the Court is an inconvenient forum.

REPRESENTATIONS AND WARRANTIES

30. Plaintiffs and Plaintiffs' Counsel represent and warrant that: (i) Plaintiffs are stockholders of Sears and were stockholders of Sears at all relevant times for purposes of maintaining standing in the Action; (ii) none of the Released Plaintiffs' Claims has been assigned, encumbered or in any manner transferred in whole or in part by Plaintiffs or Plaintiffs' Counsel; and (iii) neither Plaintiffs nor Plaintiffs' Counsel will attempt to assign, encumber or in any manner transfer, in whole or in part, any of the Released Plaintiffs' Claims.

31. Each Party represents and warrants that the Party has made such investigation of the facts pertaining to the Settlement provided for in this Stipulation, and all of the matters pertaining thereto, and has been advised by counsel, as the Party deems necessary and advisable.

ENTIRE AGREEMENT

32. This Stipulation and the attached exhibits constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written agreements, understandings or representations. All Parties agree that no representations, warranties or

inducements have been made to any Party concerning the Stipulation or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. All Parties further agree that they are not relying on any representations, warranties or covenants that are not expressly contained and memorialized in the Stipulation or its exhibits. All of the exhibits hereto are material and integral parts hereof and are fully incorporated herein by reference.

INTERPRETATION

33. This Stipulation will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

34. Section and/or paragraph titles have been inserted for convenience only and will not be used in interpreting the terms of this Stipulation.

35. The terms and provisions of this Stipulation are intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person, except with respect to (a) any attorneys' fees and expenses to be paid to Plaintiffs' Counsel pursuant to the terms of this Stipulation; and (b) the Released Parties who are not signatories hereto, who shall be third-party beneficiaries under this Stipulation and entitled to enforce it in accordance with its terms.

AMENDMENTS

36. This Stipulation may not be amended, changed, waived, discharged or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by the Parties to this Stipulation.

COUNTERPARTS

37. This Stipulation may be executed in any number of actual, telecopied or electronically mailed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. This Stipulation will become effective when the actual or telecopied counterparts have been signed by each of the Parties to this Stipulation and delivered to the other Parties. The executed signature page(s) from each actual, telecopied or electronically mailed counterpart may be joined together and attached and will constitute one and the same instrument.

CONTINUING JURISDICTION

38. The consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of enforcing the terms of this Stipulation.

NOTICE TO PARTIES

39. If any Party is required to give notice to any other Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly

given upon receipt of hand or courier delivery, or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs:

Labaton Sucharow LLP
Attn: Ned Weinberger
300 Delaware Avenue, Suite 1340
Wilmington, Delaware 19801
Telephone: (302) 573-2530

Girard Gibbs LLP
Attn: Daniel C. Girard
601 California Street, 14th Floor
San Francisco, California 94108
Telephone: (415) 981-4800

Robbins Arroyo LLP
Attn: Stephen J. Oddo
600 B Street, Suite 1900
San Diego, California 92101
Telephone: (619) 525-3990

If to Defendants Alvarez, DePodesta,
Kamlani, Kunkler, Mnuchin, Reese, or
Tisch, or Nominal Defendant Sears:

Richards, Layton & Finger, P.A.
Attn: Gregory V. Varallo
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700

Wachtell, Lipton, Rosen & Katz
Attn: Graham W. Meli
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000

If to Defendants Lampert or ESL:

Potter Anderson & Corroon LLP
Attn: Donald J. Wolfe, Jr.
1313 N. Market Street
Hercules Plaza, 6th Floor
Wilmington, Delaware 19899
Telephone: (302) 984-6000

Cleary Gottlieb Steen &
Hamilton LLP
Attn: Meredith Kotler
One Liberty Plaza
New York NY 10006
Telephone: (212) 225-2000

If to Defendant Seritage:

Morris Nichols Arsht & Tunnell LLP
Attn: William M. Lafferty
1201 N. Market Street, 18th Floor
Wilmington, Delaware 19801
Telephone: (302) 658-9200

Fried, Frank, Harris, Shriver &
Jacobson LLP
Attn: Scott B. Luftglass
One New York Plaza
New York, New York 10004
Telephone: (212) 859-8000

If to Defendants Fairholme Capital
Management, L.L.C. or Fairholme
Funds, Inc.:

Abrams & Bayliss LLP
Attn: A. Thompson Bayliss
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
Telephone: (302) 778-1000

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to
be executed by their duly authorized counsel, as of February 8, 2017.

Of Counsel:

Daniel C. Girard
Adam E. Polk
Girard Gibbs LLP
601 California Street, 14th Floor
San Francisco, California 94108
(415) 981-4800

Brian J. Robbins
Stephen J. Oddo
Nichole T. Browning
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(619) 525-3990

Of Counsel:

Paul K. Rowe
Graham W. Meli
Wachtell, Lipton, Rosen & Katz
51 West 5nd Street
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(212) 403-1000

/s/ Ned Weinberger

Ned Weinberger (#5256)
Labaton Sucharow LLP
300 Delaware Ave., Suite 1340
Wilmington, Delaware 19801
(302) 573-2530

*Co-Lead Counsel and
Liaison Counsel for Plaintiffs*

/s/ Gregory V. Varallo

Gregory V. Varallo (#2242)
Kevin M. Gallagher (#5337)
Richards, Layton & Finger, P.A.
920 North King Street
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(302) 651-7700

*Attorneys for Defendants Cesar L.
Alvarez, Paul G. DePodesta, Kunal S.
Kamlani, William C. Kunkler III, Steven
T. Mnuchin, Ann N. Reese, and Thomas J.
Tisch, and Nominal Defendant Sears
Holdings Corp.*

Of Counsel:

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Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York NY 10006
(212) 225-2000

/s/ Matthew E. Fischer

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Matthew E. Fischer (#3092)
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*Attorneys for Defendants ESL Investments
Inc. and Edward S. Lampert*

Of Counsel:

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Jacobson LLP
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(212) 859-8000

/s/ John P. DiTomo

William M. Lafferty (#2755)
John P. DiTomo (#4850)
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Wilmington, DE 19801
(302) 658-9200

*Attorneys for Defendant
Seritage Growth Properties*

/s/ A. Thompson Bayliss

A. Thompson Bayliss (#4379)
Abrams & Bayliss LLP
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
(302) 778-1000

*Attorneys for Defendants Fairholme
Capital Management, L.L.C. and
Fairholme Funds, Inc.*

EXHIBIT A



EXHIBIT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: SEARS HOLDINGS
CORPORATION STOCKHOLDER
AND DERIVATIVE LITIGATION

Consolidated
C.A. No. 11081-VCL

FINAL ORDER AND JUDGMENT

A hearing having been held before this Court on _____, 2017, pursuant to the Court's Order of _____, 2017 (the "Scheduling Order"), upon the Stipulation and Agreement of Compromise, Settlement and Release, dated February 8, 2017 (the "Stipulation"), entered into in the above-captioned, consolidated derivative action (the "Action"), which is incorporated herein by reference, it appearing that due notice of the hearing has been given in accordance with the Scheduling Order, the Parties having appeared by their respective attorneys of record, the Court having heard and considered evidence in support of the proposed Settlement, the attorneys for the Parties having been heard, an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order, the Court having determined that notice to Sears Stockholders was adequate and sufficient, and the entire matter of the proposed Settlement having been heard and considered by the Court,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this ___ day of _____, 2017, as follows:

1. **Definitions:** Unless otherwise defined herein, the capitalized terms used herein shall have the same meanings as they have in the Stipulation.

2. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and the Sears Stockholders.

3. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on _____, 2017; and (b) the Notice, which was filed with the Court on _____, 2017.

4. **Derivative Action Properly Maintained; Adequacy of Plaintiffs and Plaintiffs' Counsel:** Based on the record in the Action, the Court finds that each of the provisions of Court of Chancery Rule 23.1 has been satisfied and the Action has been properly maintained according to Court of Chancery Rule 23.1. Plaintiffs and Plaintiffs' Co-Lead Counsel have adequately represented the interests of Sears and its stockholders both in terms of litigating the Action and for purposes of entering into and implementing the Settlement.

5. **Notice:** The Court finds that the mailing and publication of the Notice: (a) were implemented in accordance with the Scheduling Order; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Sears Stockholders of: (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses; (iv) their right to object to the Settlement and/or Plaintiffs' Co-Lead Counsel's application for attorneys' fees and litigation expenses; and (v) their right to appear at the Settlement Hearing; (c) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (d) satisfied the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rule 23.1, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Releases, including the release of the Released Plaintiffs' Claims as against the Released Defendant Parties; and the dismissal with prejudice of the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to Plaintiffs, Sears

and Sears's stockholders. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

7. The Action and all of the claims asserted against the Defendants in the Action by Plaintiffs are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on the Defendants, Sears, Plaintiffs and all other Sears Stockholders, as well as their respective successors and assigns.

9. **Releases:** The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. Specifically:

(a) Upon the Effective Date, Sears, Plaintiffs, and each and every Sears Stockholder derivatively on behalf of Sears, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such only, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely,

fully, finally and forever release, relinquish, settle and discharge each and all of the Released Defendant Parties from any and all of the Released Plaintiffs' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Released Defendant Parties. In addition, Plaintiffs agree not to initiate, prosecute, assist in, or facilitate the prosecution of any other claims arising out of the same nucleus of operative facts giving rise to the Action.

(b) Upon the Effective Date, Defendants and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such only, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Plaintiff Parties from any and all of the Released Defendants' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

(c) "Released Defendants' Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees,

actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), arising out of or relating to the commencement, prosecution, or settlement of the Action; provided, however, for the avoidance of doubt, the Released Defendants' Claims shall not include the right to enforce this Stipulation or the Settlement.

(d) "Released Defendant Parties" means, whether or not each or all of the following persons or entities were named, served with process, or appeared in the Action, (i) Cesar L. Alvarez, Paul G. DePodesta, Kunal S. Kamlani, William C. Kunkler III, Edward S. Lampert, Steven T. Mnuchin, Ann N. Reese, Thomas J. Tisch, ESL Investments Inc., Seritage Growth Properties, Fairholme Capital Management, L.L.C., Fairholme Funds, Inc., and Sears Holdings Corporation; (ii) all past and present officers and directors of Sears; and (iii) for each and all of the Persons identified in the foregoing clauses (i) and (ii) (but only to the extent such Persons are released as provided above), any and all of their respective past or present

family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, insurers, reinsurers, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited-liability companies, corporations, parents, subsidiaries, divisions, direct or indirect affiliates, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants and associates.

(e) “Released Plaintiffs’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected,

liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), which Plaintiffs asserted in any of the Original Complaints, the Consolidated Complaint, or the Consolidated Amended Complaint, or which could have been asserted on behalf of Sears, or which Sears could have asserted directly, in any court, tribunal, forum or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, and which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, (i) the Seritage Transaction; (ii) the Rights Offering; (iii) the Registration Statement; (iv) the actions, inactions, deliberations, discussions, decisions, votes or any other conduct of any kind of any director, officer, employee, or agent of Sears relating to the Seritage Transaction, the Rights Offering, any related disclosures or non-disclosures in connection therewith (including, without limitation, the Registration Statement or any amendments or supplements thereto), or any other transaction, occurrence, fact, disclosure or non-disclosure alleged or set forth in any of the Original Complaints, the Consolidated Complaint, or the Consolidated Amended Complaint; or (v) the aiding and abetting by any other Person of any of the foregoing conduct; provided, however, for the avoidance of doubt, the Released Plaintiffs' Claims shall not include (x) the right to enforce this Stipulation or the Settlement, or (y) Sears's or any of its

affiliates' rights (1) to enforce or defend the terms, covenants, or provisions of, or rights relating to, any contract or agreement with Seritage or any of its affiliates, or (2) to bring or defend any claims or counterclaims relating to the performance of the landlord-tenant or contractual relationship between Sears or any of its affiliates, on the one hand, and Seritage or any of its affiliates, on the other hand.

(f) "Released Plaintiff Parties" means Plaintiffs, Plaintiffs' Counsel, and any and all of their respective past or present family members, spouses, agents, attorneys, fiduciaries, employees, assigns, partners, corporations, direct or indirect affiliates, consultants, bankers, representatives, estates, insurers, reinsurers, and advisors.

10. **No Admissions**: Neither this Judgment, the Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by: (i) any of the Defendants or any of the other Released Defendant Parties as to the validity of any claims, causes of action or other issues raised, or which might be or have been raised, in the Action or in any other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies any such wrongdoing or liability; or (ii) Plaintiffs as to the infirmity of any claim or the validity of any defense, or to the amount of any damages. The existence of the

Stipulation, its contents or any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or otherwise used by any Person for any purpose in the Action or otherwise, except as may be necessary to effectuate the Settlement. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever. Notwithstanding the foregoing, any of the Released Parties may file the Stipulation or any judgment or order of the Court related hereto in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good-faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. **Award of Attorneys' Fees, Incentive Awards, and Expenses:**

Plaintiffs' Counsel are hereby awarded attorneys' fees and litigation expenses in an aggregate amount of \$_____, to be paid solely from the Settlement Amount, which sum the Court finds to be fair and reasonable.

12. Plaintiffs Ryan Flanagan, Jacob Rossof, John Solak, and Shiva Stein are each awarded an incentive award of \$_____, which the Court finds to be fair and reasonable. Plaintiffs' incentive awards shall be payable from the fees and expenses awarded by the Court in accordance with the terms of the Stipulation.

13. No proceedings or court order with respect to the award of attorneys' fees and expenses to Plaintiffs' Counsel shall in any way disturb or affect this Judgment (including precluding this Judgment from being Final or otherwise being entitled to preclusive effect), and any such proceedings or court order shall be considered separate from this Judgment.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties, Sears and all Sears Stockholders for purposes of the administration, interpretation, implementation, and enforcement of the Settlement.

15. **Modification of the Stipulation:** Without further approval from the Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of the Parties, Sears or Sears Stockholders in connection with the Settlement. Without further order of the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

16. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the

Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, all other Sears Stockholders, Sears and Defendants, and the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Stipulation.

17. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this final judgment in the Action.

Vice Chancellor J. Travis Laster

EXHIBIT B



EXHIBIT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: SEARS HOLDINGS CORPORATION
STOCKHOLDER AND DERIVATIVE
LITIGATION

Consolidated
C.A. No. 11081-VCL

**NOTICE OF PENDENCY OF DERIVATIVE ACTION, PROPOSED SETTLEMENT OF
DERIVATIVE ACTION, SETTLEMENT HEARING AND RIGHT TO APPEAR**

*The Delaware Court of Chancery authorized this Notice.
This is not a solicitation from a lawyer.*

TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF SHARES OF COMMON STOCK OF SEARS HOLDINGS CORPORATION (“SEARS”) AS OF THE CLOSE OF BUSINESS ON _____, 2017 (“SEARS STOCKHOLDERS”). IF YOU ARE A NOMINEE WHO OR WHICH HELD SEARS COMMON STOCK AS OF THE CLOSE OF BUSINESS ON _____, 2017 FOR THE BENEFIT OF ANOTHER, PLEASE READ THE SECTION BELOW ENTITLED “NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS.”

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THIS LITIGATION.

This Notice relates to a proposed settlement (the “Settlement”) of the above-captioned, consolidated derivative action (the “Action”), which was brought by certain Sears stockholders on behalf of and for the benefit of Sears in the Court of Chancery of the State of Delaware (the “Court”). The complete terms of the Settlement, which remains subject to the approval of the Court, are set forth in a Stipulation and Agreement of Settlement, Compromise and Release, dated February 8, 2017 (the “Stipulation”), entered into by and among (i) plaintiffs Ryan Flanagan, Jacob Rossof, John Solak, and Shiva Stein (collectively, “Plaintiffs”), individually and derivatively on behalf of Sears; (ii) defendants Cesar L. Alvarez, Paul G. DePodesta, Kunal S. Kamlani, William C. Kunkler III, Edward S. Lampert, Steven T. Mnuchin, Ann N. Reese, and Thomas J. Tisch (collectively, the “Individual Defendants”), ESL Investments Inc. (“ESL”), Seritage Growth Properties (“Seritage”), Fairholme Capital Management, L.L.C. and Fairholme Funds, Inc. (collectively, “Fairholme,” and with the Individual Defendants, ESL, and Seritage, “Defendants”); and (iii) nominal defendant Sears (collectively with Plaintiffs and Defendants, the “Parties”).¹

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation. A copy of the Stipulation is available for review at the following websites: www._____.com, www._____.com, and www._____.com.

Because this Action was brought as a derivative action on behalf of and for the benefit of Sears, the benefits from the Settlement will go directly to Sears and thus there is no proof of claim form for Sears Stockholders to submit in connection with the Settlement.

WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to inform Sears Stockholders about: (a) the pendency of the Action; (b) the proposed Settlement, subject to Court approval, on the terms and conditions set forth in the Stipulation; (c) Sears Stockholders' rights with respect to the proposed Settlement and Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses; and (d) the hearing that the Court will hold on _____, 2017, at __:__ .m., at the Court of Chancery of the State of Delaware, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware, 19801, at which the Court will, among other things: (a) determine whether Plaintiffs and Plaintiffs' Co-Lead Counsel have adequately represented the interests of Sears and its stockholders; (b) determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to Plaintiffs, Sears and Sears's stockholders, and should be approved by the Court; (c) determine whether a Final Order and Judgment (as defined in paragraph 20 below) should be entered dismissing the Action with prejudice; (d) determine whether the application by Plaintiffs' Co-Lead Counsel for an award of attorneys' fees, incentive awards, and reimbursement of litigation expenses should be approved; (e) hear and consider any objections to the Settlement and/or Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees and expenses; and (f) consider any other matters that may properly be brought before the Court in connection with the Settlement.

WHAT IS THIS CASE ABOUT?

THE FOLLOWING DESCRIPTION OF THIS CASE HAS BEEN PREPARED BY COUNSEL FOR THE PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF ANY FINDINGS OF FACT.

2. On November 7, 2014, Sears announced that it was exploring the potential monetization of a portion of its owned real estate, through a potential sale-leaseback transaction, with the selected properties to be sold to a newly-formed real estate investment trust ("REIT").

3. On April 1, 2015, Sears announced that it was proceeding with the transaction and began publicly filing with the U.S. Securities and Exchange Commission (the "SEC") the documents necessary to commence and complete a rights offering by Seritage to finance, in part, the transaction (the "Rights Offering"). To that end, Sears caused Seritage, a REIT formed by Sears, to file a registration statement on Form S-11 with the SEC (together with any amendments thereto, the "Registration Statement") setting forth the terms of a potential transaction between Seritage and Sears (the "Seritage Transaction"), as well as the Rights Offering. Through the Rights Offering, each stockholder of Sears was given the right to purchase an interest in Seritage economically proportionate to the interest the stockholder owned in Sears at the time the Rights Offering commenced. The exercise price of these rights was the same for all stockholders.

4. Between May 29, 2015 and June 19, 2015, the following four complaints were filed in the Court asserting claims on behalf of Sears against the Defendants relating to the Seritage Transaction and/or the Rights Offering: *Solak v. Lampert et al.*, C.A. No. 11081-VCL (filed May 29, 2015); *Stein v. Lampert et al.*, C.A. No. 11173-VCL (filed June 18, 2015); *Rossof v. Lampert et al.*, C.A. No. 11178-VCL (filed June 19, 2015); *Flanagan v. Lampert et al.*, C.A. No. 11180-VCL (filed June 19, 2015) (the “Original Complaints”). The Original Complaints alleged that ESL and members of Sears’s Board of Directors breached fiduciary duties to stockholders in connection with the Seritage Transaction and that certain other Defendants aided and abetted such breaches.

5. Between May 2015 and June 2015, the parties to the *Solak* action engaged in expedited discovery. After entering into a confidentiality stipulation which the Court approved on June 19, 2015, certain Defendants produced certain non-public documents to Plaintiffs related to the Seritage Transaction, including, among other things, minutes of meetings of Sears’s Board of Directors and data regarding Sears’s real estate assets.

6. On June 9, 2015, Seritage filed a final prospectus concerning the Seritage Transaction and the Rights Offering. And, on July 7, 2015, Sears announced that the Seritage Transaction and the Rights Offering had closed, with approximately 97% of the rights having been exercised. Pursuant to the Seritage Transaction, Sears sold to Seritage 235 Sears- and Kmart-branded stores along with Sears’s 50 percent interests in joint ventures with third parties, which joint ventures together hold an additional 31 Sears properties.

7. On July 28, 2015, the Court entered an Order for Consolidation and Leadership consolidating the actions filed by each of the Plaintiffs into the Action and appointing as Plaintiffs’ Co-Lead Counsel the law firms of Labaton Sucharow LLP, Girard Gibbs LLP, and Robbins Arroyo LLP.

8. On October 14, 2015, Plaintiffs filed a Verified Consolidated Stockholder Derivative Complaint (the “Consolidated Complaint”). The Consolidated Complaint asserted derivative claims on behalf of Sears challenging, among other things, the consideration paid to Sears in the Seritage Transaction, the valuation of the stores sold in connection with the Seritage Transaction, and the process relating to the foregoing. The Consolidated Complaint alleged that Mr. Lampert and ESL breached their fiduciary duties as alleged controlling stockholders, that the other Individual Defendants breached their fiduciary duties, and that Seritage and Fairholme aided and abetted these alleged breaches. The Consolidated Complaint did not assert any direct claims, as Plaintiffs and their counsel concluded that claims challenging the Seritage Transaction are properly pleaded only as derivative claims.

9. Beginning in January 2016, certain of the Parties engaged in arm’s-length discussions to assess whether a settlement of the Action could be achieved. On January 12, 2016, counsel for certain of the Parties met in person in New York City to discuss the allegations set forth in the Consolidated Complaint and Defendants’ defenses. Subsequently, the Parties entered into a series of stipulations, approved by the Court, deferring Defendants’ date to respond to the Consolidated Complaint in order to allow the Parties to explore their respective settlement positions.

10. In connection with such discussions, certain Defendants produced on a rolling basis documents to Plaintiffs, Plaintiffs retained commercial real estate industry and valuation and appraisal experts to review these documents and evaluate the fairness of the Seritage Transaction, and counsel for Plaintiffs and certain Defendants held a number of in-person and telephonic meetings. In connection with the Parties' discussions, on May 2, 2016, Plaintiffs sent Defendants a confidential settlement demand. On May 3, 2016, Plaintiffs' Co-Lead Counsel and their valuation experts met with counsel for certain of the Defendants in New York City, to further discuss the Parties' respective positions.

11. On July 12, 2016, Plaintiffs filed a Verified Consolidated Amended Stockholder Derivative Complaint (the "Consolidated Amended Complaint"). The Consolidated Amended Complaint, which remains the operative complaint in the Action, realleges substantially identical claims as set forth in the Consolidated Complaint

12. During the summer of 2016, certain Parties continued to explore settlement and scheduled a mediation with the Honorable Layn R. Phillips, a former United States District Court Judge. Certain Parties submitted mediation statements on July 15, 2016, and on August 9, 2016, Plaintiffs' Co-Lead Counsel, certain Defendants and their counsel, and certain of Defendants' insurance carriers and their counsel participated in an in-person mediation before Judge Phillips. The mediation session ended without an agreement being reached.

13. Between August 9, 2016 and September 23, 2016, Plaintiffs' Co-Lead Counsel, certain Defendants and their counsel, and certain of Defendants' insurance carriers and their counsel continued to engage in settlement discussions with the assistance of Judge Phillips.

14. On September 23, 2016, Plaintiffs' Co-Lead Counsel, certain Defendants and their counsel, and certain of Defendants' insurance carriers and their counsel participated in a second in-person mediation before Judge Phillips. Following the second mediation, Judge Phillips made a recommendation for settlement of the Action for a total payment of \$40 million to Sears (inclusive of any attorneys' fees and expenses that would be sought by Plaintiffs' counsel as a result of an approved settlement) to be paid by Defendants and/or their insurers. The Parties subsequently accepted the mediator's recommendation, and agreed to settle the Action on the terms described in this Notice.

15. On _____, 2017, the Court entered the Scheduling Order in connection with the Settlement which, among other things, authorized this Notice to be provided to Sears Stockholders and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

WHAT ARE THE TERMS OF THE SETTLEMENT?

16. As consideration for the Settlement:

(a) \$40 million in cash (the "Settlement Amount") shall be paid by the Defendants and/or their insurers into an interest-bearing escrow account to be established by Plaintiffs' Co-Lead Counsel (the "Escrow Account"). The Settlement Amount will be

paid into the Escrow Account within twenty (20) calendar days of the date on which the Final Order and Judgment becomes Final.

(b) If the Settlement is approved by the Court and the Effective Date occurs, the Settlement Amount, less Plaintiffs' Counsel's attorneys' fees and litigation expenses as awarded by the Court, Plaintiffs' incentive awards, and the costs of providing this Notice, will be paid from the Escrow Account to Sears.

WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?

17. Plaintiffs and Plaintiffs' Co-Lead Counsel thoroughly considered the facts and law underlying the claims asserted in the Action. Although Plaintiffs and Plaintiffs' Co-Lead Counsel believe that the claims asserted have merit, the Court could have adopted the Defendants' view of the applicable legal standard or of the underlying evidence, and could enter judgment for the Defendants, either dismissing the Action prior to trial or after trial. Plaintiffs and Plaintiffs' Co-Lead Counsel also considered the expense and length of continued proceedings necessary to pursue their claims against the Defendants through trial, as well as the uncertainty of appeals.

18. In light of the substantial monetary recovery included in the Settlement, and on the basis of information available to them, including publicly available information and discovery obtained from certain Defendants, Plaintiffs and Plaintiffs' Co-Lead Counsel have determined that the proposed Settlement is fair, reasonable, adequate, and in the best interests of Sears and Sears's stockholders. The Settlement provides substantial immediate benefits to Sears and its stockholders without the risk that continued litigation could result in obtaining similar or lesser relief for Sears and its stockholders after continued extensive and expensive litigation, including trial and the appeals that were likely to follow.

19. Defendants, who believe they have substantial defenses to the claims alleged against them in the Action, have denied and continue to deny the allegations of wrongdoing, liability, and violation of any laws and the existence of any damages asserted in or arising from the Action, but have nevertheless concluded that further litigation in connection with the Action would be time consuming and expensive, and after weighing the costs, disruption, and distraction of continued litigation, have determined that the Action should be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation.

WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?

20. If the Settlement is approved, the Court will enter a final order and judgment (the "Final Order and Judgment"). Pursuant to the Final Order and Judgment, upon the Effective Date of the Settlement, the Action will be dismissed with prejudice and the following releases will occur:

Release of Claims by Plaintiffs and Sears: Sears, Plaintiffs, and each and every Sears Stockholder derivatively on behalf of Sears, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such only, by

operation of the Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Defendant Parties (defined below) from any and all of the Released Plaintiffs' Claims (defined below), and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Released Defendant Parties. In addition, Plaintiffs agree not to initiate, prosecute, assist in, or facilitate the prosecution of any other claims arising out of the same nucleus of operative facts giving rise to the Action.

"Released Plaintiffs' Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), which Plaintiffs asserted in any of the Original Complaints, the Consolidated Complaint, or the Consolidated Amended Complaint, or which Plaintiffs could have asserted, or which could have been asserted on behalf of Sears, or which Sears could have asserted directly, in any court, tribunal, forum or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, and which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, (i) the Seritage Transaction; (ii) the Rights Offering; (iii) the Registration Statement; (iv) the actions, inactions, deliberations, discussions, decisions, votes or any other conduct of any kind of any director, officer, employee, or agent of Sears relating to the Seritage Transaction, the Rights Offering, any related disclosures or non-disclosures in connection therewith (including, without limitation, the Registration Statement or any amendments or supplements thereto), or any other transaction, occurrence, fact, disclosure or non-disclosure alleged or set forth in any of the Original Complaints, the Consolidated Complaint, or the Consolidated Amended Complaint; or (v) the aiding and abetting by any other Person of any of the foregoing conduct; *provided, however*, for the avoidance of doubt, the Released Plaintiffs' Claims shall not include (x) the right to enforce this Stipulation or the Settlement, or (y) Sears's or any of its affiliates' rights (1) to enforce or defend the terms, covenants, or provisions of, or rights relating to, any contract or agreement with Seritage or any of its affiliates, or (2) to bring or defend any claims or counterclaims relating to the performance of the landlord-tenant or contractual relationship between Sears or any of its affiliates, on the one hand, and Seritage or any of its affiliates, on the other hand.

"Released Defendant Parties" means, whether or not each or all of the following persons or entities were named, served with process, or appeared in the Action (i) Cesar L. Alvarez, Paul G. DePodesta, Kunal S. Kamlani, William C. Kunkler III, Edward S. Lampert, Steven T. Mnuchin, Ann N. Reese, Thomas J. Tisch, ESL Investments Inc., Seritage Growth Properties, Fairholme Capital Management, L.L.C., Fairholme Funds, Inc., and Sears Holdings Corporation; (ii) all past and present officers and directors of Sears; and (iii) for each and all of the Persons identified in the foregoing clauses (i) and (ii) (but only to the extent such Persons are released as provided above), any and all of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, insurers, reinsurers, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited-liability companies, corporations,

parents, subsidiaries, divisions, direct or indirect affiliates, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants and associates.

Release of Claims by the Settling Defendants: Defendants and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such only, by operation of the Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Released Plaintiff Parties from any and all of the Released Defendants' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

"Released Defendants' Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), arising out of or relating to the commencement, prosecution, or settlement of the Action; *provided, however*, for the avoidance of doubt, the Released Defendants' Claims shall not include the right to enforce this Stipulation or the Settlement.

"Released Plaintiff Parties" means Plaintiffs, Plaintiffs' Counsel, and any and all of their respective past or present family members, spouses, agents, attorneys, fiduciaries, employees, assigns, partners, corporations, direct or indirect affiliates, consultants, bankers, representatives, estates, insurers, reinsurers, and advisors.

"Unknown Claims" means any Released Claims that a Person granting a Release hereunder does not know or suspect to exist in his, her or its favor at the time of the Release, including without limitation those which, if known, might have affected the decision to enter into or object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall have expressly waived, and Sears and each of the other Sears Stockholders shall be deemed to have, and by operation of the Final Order and Judgment by the Court shall have, waived, relinquished and released any and all provisions, rights and benefits conferred by or under California Civil Code § 1542 or any law or principle of common law of the United States or any state or territory of the United States which is similar, comparable or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and Defendants acknowledge, and Sears and all other Sears Stockholders by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiffs, Defendants, Sears and all other Sears Stockholders by operation of law, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, heretofore existed or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiffs and Defendants acknowledge, and Sears and all other Sears Stockholders by operation of law shall be deemed to have acknowledged, that this waiver and the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for and was a material element of the Settlement and was relied upon by each and all of the Parties in entering into the Stipulation and agreeing to the Settlement.

21. Pending final determination by the Court of whether the Settlement should be approved, all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation, have been stayed. By order of the Court, pending final determination of whether the Settlement should be approved, Plaintiffs and all other Sears Stockholders are barred and enjoined from commencing, instituting or prosecuting any of the Released Plaintiffs’ Claims against any of the Released Defendant Parties.

HOW WILL PLAINTIFFS’ COUNSEL BE PAID?

22. Plaintiffs’ Counsel have not received any payment for their services in pursuing the claims asserted in the Action, nor have Plaintiffs’ Counsel been reimbursed for their litigation expenses. Plaintiffs’ Counsel invested their own resources pursuing the Action on a contingency basis, meaning they would only be compensated for their time and recover their expenses if they created a benefit for Sears and Sears’s stockholders through the Action. In light of the risks undertaken in pursuing the Action on a contingency basis and the benefits created for Sears and Sears’s stockholders through the Settlement and the prosecution of the Action, Plaintiffs’ Co-Lead Counsel intend to ask the Court for up to 20 percent of the Settlement Amount (or \$8,000,000) as (1) fees for representing Plaintiffs and recovering the Settlement, and (2) to reimburse expenses they incurred in the litigation.

23. Plaintiffs’ Co-Lead Counsel also intend to apply for incentive awards for each Plaintiff in an amount not to exceed \$10,000, payable from the fees and expenses awarded by the Court.

24. Before final approval of the Settlement, Plaintiffs’ Co-Lead Counsel will apply to the Court for an award of attorneys’ fees and litigation expenses to be paid solely from (and out of) the Settlement Amount. The Court will determine the amount of any award of attorneys’ fees and litigation expenses. Sears Stockholders are not personally liable for any such fees or expenses.

**WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I
HAVE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

25. The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held before The Honorable J. Travis Laster, Vice Chancellor, on _____, 2017, at __:__.m., at the Court of Chancery of the State of Delaware, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware, 19801. At the Settlement Hearing, the Court will, among other things: (a) determine whether Plaintiffs and Plaintiffs' Co-Lead Counsel have adequately represented the interests of Sears and its stockholders; (b) determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to Plaintiffs, Sears and Sears's stockholders, and should be approved by the Court; (c) determine whether a Final Order and Judgment should be entered dismissing the Action with prejudice; (d) determine whether the application by Plaintiffs' Co-Lead Counsel for an award of attorneys' fees, incentive awards, and reimbursement of litigation expenses should be approved; (e) hear and consider any objections to the Settlement and/or Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees and expenses; and (f) consider any other matters that may properly be brought before the Court in connection with the Settlement.

26. Any person that owned Sears common stock as of _____, 2017 and continues to own such stock through _____, 2017, the date of the Settlement Hearing, who objects to the Settlement or the application for attorneys' fees and expenses by Plaintiffs' Co-Lead Counsel, or who otherwise wishes to be heard, may appear in person or through his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; *provided, however*, that no such person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such person shall be received and considered by the Court unless, no later than _____, such person files with the Register in Chancery, Court of Chancery, 500 North King Street, Wilmington, Delaware, 19801, the following: (a) a written and signed notice of intention to appear which states the name, address and telephone number of the objector and, if represented, his, her or its counsel; (b) proof that the objector owned shares of Sears stock as of _____, 2017 and continues to hold such shares; and (c) a written detailed statement of the person's objections to any matter before the Court, and the specific grounds therefor or the reasons why such person desires to appear and to be heard, as well as all documents and writings which such person desires the Court to consider, including any legal and evidentiary support. Any such filings with the Court must also be served upon each of the following counsel (by hand, first class U.S. mail, or express service) such that they are received no later than _____:

Labaton Sucharow LLP
Attn: Ned Weinberger
300 Delaware Avenue, Suite 1340
Wilmington, Delaware 19801

Morris Nichols Arsht & Tunnell LLP
Attn: William M. Lafferty
1201 N. Market Street, 18th Floor
Wilmington, Delaware 19801

Richards, Layton & Finger, P.A.
Attn: Gregory V. Varallo
920 North King Street
Wilmington, Delaware 19801

Abrams & Bayliss LLP
Attn: A. Thompson Bayliss
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807

Potter Anderson & Corroon LLP
Attn: Donald J. Wolfe, Jr.
1313 N. Market Street
Hercules Plaza, 6th Floor
Wilmington, Delaware 19899

27. **Unless the Court orders otherwise, any person or entity who or which does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlement and Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees and litigation expenses and shall be forever barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement or the requested attorneys' fees and litigation expenses, or from otherwise being heard concerning the Settlement or the requested attorneys' fees and litigation expenses in this or any other proceeding.**

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

28. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, 500 North King Street, Wilmington, Delaware, 19801. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the following websites: www._____.com, www._____.com, and www._____.com. If you have questions regarding the Settlement, you may write or call the following representative for Plaintiffs' Co-Lead Counsel: Darnell Donohue, Esq., Robbins Arroyo LLP, 600 B Street, Suite 1900, San Diego, CA 92101, Tel: (619) 525-3990.

NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS

29. If you are a brokerage firm, bank, or other person or entity who or which held shares of Sears common stock as of the close of business on _____, 2017 as a record holder for the beneficial interest of persons or organizations other than yourself, you must either: (a) within seven (7) calendar days of receipt of this Notice, request from Sears through _____ (the "Notice Administrator") sufficient copies of this Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to the Notice Administrator at _____. If you choose the second option, the Notice

Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Notice Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained by calling the Notice Administrator toll-free at _____.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF
THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

Dated: _____, 2017

BY ORDER OF THE COURT OF
CHANCERY OF THE STATE OF
DELAWARE

EXHIBIT C



EXHIBIT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: SEARS HOLDINGS
CORPORATION STOCKHOLDER
AND DERIVATIVE LITIGATION

Consolidated
C.A. No. 11081-VCL

SCHEDULING ORDER

WHEREAS, the Parties to the above-captioned, consolidated derivative action (the “Action”) have entered into a Stipulation and Agreement of Settlement, Compromise and Release, dated February 8, 2017 (the “Stipulation”), which provides for the settlement and dismissal with prejudice of the Action upon the terms and conditions set forth in the Stipulation;

WHEREAS, the Parties have made an application, pursuant to Court of Chancery Rule 23.1, for entry of a scheduling order in accordance with the Stipulation, approving the form and content of the notice of the Settlement to Sears Stockholders and scheduling the date and time for the Settlement Hearing;

WHEREAS, the Court having read and considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to Sears Stockholders; and all Parties having consented to the entry of this Order;

NOW THEREFORE, IT IS HEREBY ORDERED, this ___ day of _____,
2017, as follows:

1. **Definitions:** Unless otherwise defined herein, the capitalized terms used herein shall have the same meanings as they have in the Stipulation.

2. **Settlement Hearing:** The Court will hold a settlement fairness hearing (the “Settlement Hearing”) on _____, 2017, at __:__ .m., at the Court of Chancery of the State of Delaware, New Castle County Courthouse, 500 North King Street, Wilmington, Delaware, 19801, for the following purposes: (a) to determine whether Plaintiffs and Plaintiffs’ Co-Lead Counsel have adequately represented the interests of Sears and its stockholders; (b) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to Plaintiffs, Sears and Sears’s stockholders, and should be approved by the Court; (c) to determine whether a Final Order and Judgment substantially in the form attached as Exhibit A to the Stipulation should be entered dismissing the Action with prejudice; (d) to determine whether the application by Plaintiffs’ Co-Lead Counsel for an award of attorneys’ fees, incentive awards, and reimbursement of litigation expenses should be approved; (e) to hear and consider any objections to the Settlement and/or Plaintiffs’ Co-Lead Counsel’s application for an award of attorneys’ fees, incentive awards, and expenses; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

3. The Court may adjourn the Settlement Hearing and approve the proposed Settlement with such modifications as the Parties may agree to without further notice to Sears Stockholders.

4. **Manner of Giving Notice:** Notice of the Settlement and the Settlement Hearing shall be given by Sears as follows:

(a) Not later than sixty (60) calendar days before the Settlement Hearing (the “Notice Date”), Sears shall mail, or cause to be mailed, a copy of the Notice, substantially in the form attached to the Stipulation as Exhibit B, by first-class mail or other mail service if mailed outside the United States, to each Person who was a stockholder of record of Sears common stock as of the date that the Stipulation was submitted to the Court (other than Defendants) at his, her, or its last known address appearing in the stock transfer records maintained by or on behalf of Sears as of the close of business on the date that the Stipulation was filed with the Court (the “Record Date”). All Sears Stockholders who are record holders of Sears common stock on behalf of beneficial owners shall be requested in the Notice to forward the Notice to such beneficial owners of those shares. Sears shall use reasonable efforts to give notice to such beneficial owners by causing additional copies of the Notice (i) to be made available to any record holder who, prior to the Settlement Hearing, requests the same for

distribution to beneficial owners, or (ii) to be mailed to beneficial owners whose names and addresses Sears receives from record owners.

(b) Not later than two (2) business days after the Notice Date, Plaintiffs' Co-Lead Counsel shall post a copy of the Notice on their respective firm websites, and such copy shall remain posted on such websites through the Effective Date of the Settlement.

(c) Not later than fifteen (15) calendar days prior to the Settlement Hearing, (i) Sears shall serve on Plaintiffs' Co-Lead Counsel and file with the Court proof, by affidavit or declaration, of compliance with paragraph 4(a) above; and (ii) Plaintiffs' Co-Lead Counsel shall serve on counsel for Defendants and file with the Court proof, by affidavit or declaration, of compliance with paragraph 4(b) above.

5. **Approval of Form and Content of Notice:** The Court (a) approves, as to form and content, the Notice, attached to the Stipulation as Exhibit B, and (b) finds that the mailing and publication of the Notice in the manner and form set forth in paragraph 4 of this Order: (i) constitutes notice that is reasonably calculated, under the circumstances, to apprise Sears Stockholders of the pendency of the Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees, incentive awards, and reimbursement of litigation expenses, of

their right to object to the Settlement and/or Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees, incentive awards, and litigation expenses, and of their right to appear at the Settlement Hearing; (ii) constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iii) satisfies the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice before it is mailed and published.

6. **Appearance and Objections at Settlement Hearing:** Any Sears Stockholder that continues to own shares of Sears common stock as of the date of the Settlement Hearing who objects to the Settlement or the application for attorneys' fees, incentive awards, and expenses by Plaintiffs' Co-Lead Counsel, or who otherwise wishes to be heard, may appear in person or through his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; *provided, however*, that no such person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such person shall be received and considered by the Court unless, no later than fifteen (15) calendar days prior to the Settlement Hearing, such person files with the Register in Chancery, Court of Chancery, 500 North King Street, Wilmington, Delaware,

19801, the following: (a) a written and signed notice of intention to appear which states the name, address and telephone number of the objector and, if represented, his, her or its counsel; (b) proof that the objector owned shares of Sears stock as of the Record Date and continues to hold such shares; and (c) a written detailed statement of the person's objections to any matter before the Court, and the specific grounds therefor or the reasons why such person desires to appear and to be heard, as well as all documents and writings which such person desires the Court to consider, including any legal and evidentiary support. Any such filings with the Court must also be served upon each of the following counsel (by hand, first class U.S. mail, or express service) such that they are received no later than fifteen (15) calendar days prior to the Settlement Hearing:

Labaton Sucharow LLP
Attn: Ned Weinberger
300 Delaware Avenue, Suite 1340
Wilmington, Delaware 19801

Morris Nichols Arsht & Tunnell LLP
Attn: William M. Lafferty
1201 N. Market Street, 18th Floor
Wilmington, Delaware 19801

Richards, Layton & Finger, P.A.
Attn: Gregory V. Varallo
920 North King Street
Wilmington, Delaware 19801

Abrams & Bayliss LLP
Attn: A. Thompson Bayliss
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807

Potter Anderson & Corroon LLP
Attn: Donald J. Wolfe, Jr.
1313 N. Market Street
Hercules Plaza, 6th Floor
Wilmington, Delaware 19899

7. Unless the Court orders otherwise, any person or entity who or which does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlement and Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees, incentive awards, and litigation expenses and shall be forever barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement or the requested attorneys' fees, incentive awards, and litigation expenses, or from otherwise being heard concerning the Settlement or the requested attorneys' fees, incentive awards, and litigation expenses in this or any other proceeding.

8. **Stay and Temporary Injunction:** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs and all other Sears Stockholders from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Released Defendant Parties.

9. **Notice Costs:** All costs of providing the Notice incurred by Sears or any of its agents shall be subject to reimbursement as set forth in paragraph 9 of the Stipulation.

10. **Termination of Settlement:** If the Settlement is terminated pursuant to paragraph 13 of the Stipulation, the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Stipulation, and shall promptly agree on a new scheduling order to govern further proceedings in this Action.

11. **Use of this Order:** Neither the Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by: (i) any of the Defendants or any of the other Released Defendant Parties as to the validity of any claims, causes of action, other issues raised, or which might be or have been raised, in the Action or in any other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies such wrongdoing or liability; or (ii) Plaintiffs as to the infirmity of any claim or the validity of any defense, or to the amount of any damages. The existence of the Stipulation, its contents or any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or otherwise used by any Person for any purpose in the Action or otherwise, except as may be necessary to effectuate the Settlement. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever. Notwithstanding the foregoing, any of the Released Parties may file the Stipulation

or any judgment or order of the Court related hereto in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good-faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. **Supporting Papers:** Plaintiffs' Co-Lead Counsel shall file and serve the opening papers in support of the proposed Settlement and Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees, incentive awards, and reimbursement of litigation expenses no later than thirty (30) calendar days prior to the Settlement Hearing; opposition papers, if any, shall be filed and served no later than fifteen (15) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and served no later than five (5) calendar days prior to the Settlement Hearing.

Vice Chancellor J. Travis Laster