

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Russell Brimer, (“Brimer”) and Peachtree Playthings, Inc. (“Peachtree”) with Brimer and Peachtree collectively referred to as the “Parties.”

1.2 Brimer

Brimer is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Peachtree

For purposes of this Agreement only, Brimer has alleged and Peachtree does not dispute that Peachtree employs 10 or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Brimer alleges that Peachtree manufactured, distributed and/or sold, in the State of California, certain types of markers with vinyl/PVC pouches, including, but not limited to, INC. Magnetic Dry Erase Markers (#86009), that exposed users to DEHP without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

1.5 Notice of Violation

On August 1, 2012, Brimer served Peachtree and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public enforcers and Peachtree with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn

consumers of the presence of DEHP, a toxic chemical found in their headphone products sold in California. Peachtree received the 60-Day Notice of Violation. Peachtree represents, as of the date it executes this Agreement, that it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in its products, as identified in the 60-Day Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Peachtree. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Peachtree denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that, to Peachtree's actual knowledge, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Peachtree of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by the Peachtree of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Peachtree. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Peachtree's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Peachtree as to the allegations in the 60-Day Notice received from Brimer, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Marin County Superior Court has jurisdiction over the

parties to enforce the settlement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term “Covered Products” means any marker products including a vinyl/PVC pouch or container containing DEHP, including, but not limited to, INC. Magnetic Dry Erase Markers, Item #860009.

2.2 The term “DEHP Free” Covered Products shall mean Covered Products containing Accessible Components, materials or other components that may be handled, touched or mouthed by a consumer, and which components contain less than or equal to 1,000 parts per million (“ppm”) of DEHP as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C.

2.3 The term “DEHP Free Standard” shall mean the above-referenced standard that will cause a Covered Product to qualify as DEHP Free

2.4 “Effective Date” shall mean February 1, 2013.

3. INJUNCTIVE-TYPE RELIEF

3.1 Formulation Commitment

3.1.1 No later than the Effective Date, Defendant shall provide the DEHP Free Standard, to its then-current Vendors of Covered Products that will be sold or offered for sale to California retailers or consumers, or retailers that Defendant reasonably understands has a retail outlet in United States, and shall instruct each Vendor to use reasonable efforts to provide Covered Products that comply with such DEHP Free Standard expeditiously. In addressing the obligation set forth in the preceding sentence, Defendant shall not employ statements that will encourage a Vendor to delay compliance with the DEHP Free Standard. Upon request, Defendant shall provide Plaintiff with copies of such Vendor notification and Plaintiff shall regard such copies as confidential business information.

3.1.2 Peachtree alleges that between the time of its receipt of Mr. Brimer's Notice of Violation and the Effective Date, it ceased ordering or causing to be manufactured any Covered Product that is not DEHP Free. Notwithstanding that allegation, no later than the Effective Date, Defendant shall not order, cause to be ordered, manufacture or cause to be manufactured any Covered Product that is not confirmed to be DEHP Free.

3.1.3 For every Covered Product ordered, caused to be ordered, manufactured or caused to be manufactured after the Effective Date, Defendant shall maintain copies of Vendor or manufacturer testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the DEHP concentration standard. In the event Brimer reasonably complains of any material breach of this agreement to Peachtree, and reasonably serves a written demand for copies of such correspondence in light of such alleged breach, Peachtree shall produce copies of such correspondence to Brimer within fifteen (15) days of receipt of such written demand.

3.2 Previously Obtained or Distributed Covered Products.

3.2.1 Product Warnings

3.2.2 Peachtree asserts that it maintains no inventory of the Covered Products and that it is only aware of a modest amount of inventory of the Covered Products remaining in California retail stores. After August 31, 2013, should Peachtree become aware of any California retailer having inventory or stock of any Covered Product that is not DEHP, Peachtree shall provide warning labels and signs in the form below to such retailer, with instructions to attach the labels to the Covered Products or post the signs *in immediate proximity* to the point of display of any and all such Covered Products for the benefit of its customers. The instructions shall also direct that each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary

individual under customary conditions *before* purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Product the warning applies, so as to minimize the risk of consumer confusion. The form for all labels and signs shall be as follows:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

3.2.3 Peachtree shall maintain records of compliance correspondence, inventory reports or other communication confirming compliance with §§ 3.2.1 through 3.2.2 for three (3) years from the Effective Date and shall produce copies of such records upon written request by Brimer.

4. MONETARY PAYMENTS

4.1 Peachtree shall pay a civil penalty in the amount of \$8,000.00 on or before March 1, 2013. The civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Brimer. Peachtree shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" in the amount of \$6,000.00 representing 75% of the total penalty; and (b) one check made payable to "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,000.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 4.3 below.

4.2 Augmentation of Civil Penalty Payments

For purposes of the penalty assessment under this Consent To Judgment, plaintiff is relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, plaintiff discovers and presents to Defendant evidence that the Covered Products have been distributed by Peachtree prior to the Effective Date, in sales volumes materially different than those identified by

Defendant prior to execution of this Agreement, then Defendant shall be liable for an additional penalty amount of \$10,000.00. Defendant shall also be liable for any reasonable, additional attorney fees expended by plaintiff in discovering such additional retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, defendant shall have thirty (30) days to agree to the amount of fees and penalties owing by Defendant.

Any augmentation of the civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Brimer, as provided by California Health & Safety Code § 25249.12(d). Peachtree shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" in the amount of \$7,500.00, representing 75% of the total penalty; and (b) one check made payable to "The Chanler Group in Trust for Brimer" in the amount of \$2,500.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 4.3 below.

4.3 Payment Procedures

4.3.1. Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Brimer, pursuant to Sections 4.1 through 4.2, shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 4.1 through 4.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.3.1(a), as proof of payment to OEHHA.

Any failure by defendant to deliver the above-referenced civil penalty payments to either OEHHA or The Chanler Group within two days of the required date shall result in imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

4.3.2 Issuance of 1099 Forms. After each payment, Peachtree shall issue separate 1099 forms for each payment, as follows:

- (a) For each penalty payment owed in Sections 4.1 through 4.2, a 1099 shall be issued to the Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of 75% of the total penalty payment;
- (b) For each penalty payment owed in Sections 4.1 through 4.2, a 1099 shall be issued to Brimer, whose address and tax identification number shall be furnished upon request, in the amount of 25% of the total penalty payment

4.4 Reimbursement Of Fees And Costs

The parties acknowledge that Brimer and his counsel offered to resolve this dispute without

reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Brimer then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. On or before March 1, 2013, Peachtree shall pay \$25,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Peachtree's attention, and negotiating a settlement in the public interest. Peachtree shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment to the address listed in Section 4.3.1 above.

Any failure by Peachtree to deliver any of the above-referenced payments to The Chanler Group within two days of the required date shall result in imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

5. RELEASES

5.1 BRIMER'S RELEASE OF PEACHTREE

5.1.1 This Settlement Agreement is a full, final and binding resolution between Brimer, and Peachtree, of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Peachtree and its attorneys, successors, licensors and assigns, including Peachtree Playthings (HK) Limited and Southern States Marketing Incorporated ("Defendant Releasees"), and all entities to whom Peachtree directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including

Wal-Mart Stores, Inc. and Family Dollar Stores, Inc. (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Peachtree in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all Brimer’s rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Brimer may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to the DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Peachtree before the Effective Date (collectively “claims”), against Peachtree and Releasees.

5.1.2 Brimer also, in his individual capacity only and *not* in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Brimer, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Peachtree Releasees. Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO 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.

Brimer, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.3 This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Peachtree's alleged failure to warn about exposures to or identification of the DEHP contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to Peachtree.

5.1.4 This Section 5.1 release is expressly limited to any alleged violations that occur prior to August 31, 2013, and does not release any entity or individual besides Releasees from any liability for any violation of Proposition 65 regarding the Covered Products that occurs after August 31, 2013.

5.1.5 Nothing in this Section affects Brimer's right to commence or prosecute an action under Proposition 65 against any person other than Releasees. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Defendant Releasees, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any

component parts thereof to Peachtree.

5.2 Peachtree's Release of Brimer

The Release by Brimer is mutual. Peachtree, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Brimer and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Brimer and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

Peachtree also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Peachtree of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Peachtree acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO 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.

Peachtree expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Peachtree may ask Brimer, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Brimer agrees to reasonably cooperate with Peachtree and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Peachtree will reimburse Brimer and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000.00, exclusive of fees and cost that may be incurred on appeal. Peachtree will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Peachtree within ten days after its receipt of monthly invoices from Brimer for work performed under this paragraph. Any failure by Peachtree to timely pay Brimer invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent

by certified mail and electronic mail to the following:

For Peachtree Playthings, Inc. to:

Mark Tasman, President
Peachtree Playthings, Inc.
PO Box 723665
Atlanta GA 31139

With copy to their counsel at

Albert M. Cohen
Loeb &Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, CA 90067

For Brimer to:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Brimer agrees to comply with the reporting form requirements referenced, in California Health & Safety Code §25249.7(f).

11. MODIFICATION

This Agreement may be modified only by written agreement of the Parties or court order.

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,

commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY'S FEES

13.1 Should Brimer prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Brimer shall be entitled to his reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Peachtree prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Peachtree shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Brimer's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13.2 Except as specifically provided for hereinabove, each Party shall bear its own costs and attorney's fees in connection with the Notice.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all

Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

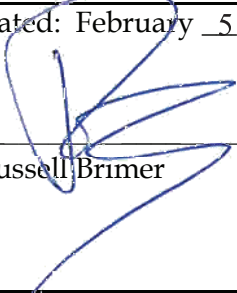
15. COUNTERPARTS, FACSIMILE SIGNATURES

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

16. AUTHORIZATION

The undersigned parties and their counsel are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO AGREED

<p>Dated: February <u>5</u>, 2013</p>  <p>_____ Russell Brimer</p>	<p>Dated: February __, 2013</p> <p>_____ Mark Tasman, President Peachtree Playthings, Inc.</p>
---	--

Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

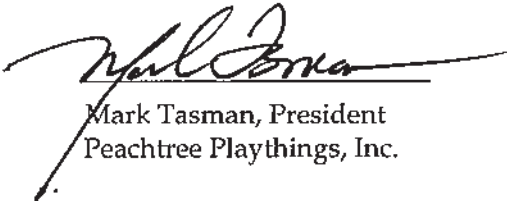
15. COUNTERPARTS, FACSIMILE SIGNATURES

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

16. AUTHORIZATION

The undersigned parties and their counsel are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO AGREED

<p>Dated: February __, 2013</p> <p>_____</p> <p>Russell Brimer</p>	<p>Dated: February <u>1</u>, 2013</p> <p></p> <p>Mark Tasman, President Peachtree Playthings, Inc.</p>
--	--