

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Indiana Mills & Manufacturing Inc. (“Indiana Mills”), with Englander and Indiana Mills individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Indiana Mills employs ten 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Indiana Mills manufactures, imports, sells, or distributes for sale in the state of California, ratchet tie-downs that Englander alleges contain lead without first providing the clear and reasonable exposure warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are ratchet tie-downs that are manufactured, sold, or distributed for sale in California by Indiana Mills, including, but not limited to, the *Pro Series Transom Tie-Down, Part No. F18740 (#0 79111 18740 5)* (“Products”).

### 1.4 Notice of Violation

On or about August 1, 2012, Englander served Indiana Mills and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Englander’s allegation that Indiana Mills violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to lead. To the

best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Indiana Mills denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Indiana Mills of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Indiana Mills of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Indiana Mills. This section shall not, however, diminish or otherwise affect Indiana Mills' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 1, 2013.

## **2. INJUNCTIVE RELIEF**

Commencing on the Effective Date and continuing thereafter, Indiana Mills shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Reformulated Products. For purposes of this Settlement Agreement Reformulated Products are Products that contain a maximum of 100 parts per million lead content by weight in any grip or handle component analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B or equivalent methodologies utilized by state or federal agencies for determining lead content in a solid substance.

## **3. MONETARY PAYMENTS**

### **3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)**

Pursuant to Health & Safety Code section 25249.7(b), Indiana Mills shall pay \$7,000 in civil penalties. Within five days of the Effective Date, Indiana Mills shall make an initial civil

penalty payment of \$2,000. Thereafter, on October 15, 2013, Indiana Mills shall make a final civil penalty payment of \$5,000. Pursuant to title 11, California Code of Regulations section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than October 1, 2013, an officer of Indiana Mills certifies in writing to Englander's counsel that one-hundred percent (100%) of the Products distributed for sale in California are Reformulated Products as defined by section 2, and that Indiana Mills will continue to only offer Reformulated Products in California in the future. Alternatively, Indiana Mills may certify that it is no longer offering the Products for sale in the California market, and that it will only recommence sales of the Products upon obtaining a commitment from its vendor or other supplier that one-hundred percent of the Products procured for sale in California are Reformulated Products as defined by section 2.

Each civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) of the penalty retained by Englander. Within five business days of the Effective Date, Indiana Mills shall issue two checks for the following amounts made payable to: (a) "The Chanler Group in Trust for OEHHA" in the amount of \$1,500; and (b) "The Chanler Group in Trust for Peter Englander" in the amount of \$500.

Indiana Mills shall also issue a separate 1099 form for its penalty payments to: (a) "Office of Environmental Health Hazard Assessment," P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) "Peter Englander," whose address and tax identification number shall be furnished, upon request, after this Settlement Agreement is fully executed by the Parties. Payment shall be delivered to the payment address provided in Section 3.3.

### **3.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Indiana Mills shall pay \$21,500 for all fees and costs incurred investigating, bringing

this matter to the attention of Indiana Mills' management, and negotiating a settlement in the public interest. Indiana Mills shall deliver its payment within five business days of the Effective Date in a check payable to "The Chanler Group," and provide a separate 1099 form for fees and costs reimbursed to The Chanler Group (EIN: 94-3171522).

### **3.3 Payment Address**

All payments and tax forms required by this Settlement Agreement shall be delivered to the following address:

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Englander's Release of Indiana Mills & Manufacturing Inc.**

This Settlement Agreement is a full, final, and binding resolution between Englander and Indiana Mills of any violation of Proposition 65 that was or could have been asserted by Englander, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Indiana Mills, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Indiana Mills directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on alleged unwarned exposures to lead contained in Products manufactured, sold and/or distributed for sale by Indiana Mills in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Englander, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Indiana Mills and Releasees, including, without limitation, all actions and causes of action, suits,

liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to lead in Products manufactured, sold, or distributed for sale in California by Indiana Mills prior to the Effective Date.

#### **4.2 Indiana Mills' Release of Englander**

Indiana Mills, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Englander 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 Englander 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.

#### **5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, Indiana Mills may request in writing that Englander draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Englander and Indiana Mills agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Indiana Mills agrees to reimburse Englander and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$15,000. Within ten business days of receiving a monthly invoice from Englander's counsel for work performed under this section, Indiana Mills will remit payment to the address provided in section 3.3.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Indiana Mills may provide written notice to Englander of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Indiana Mills & Manufacturing Inc.:

Steven R. Davis, General Counsel  
Indiana Mills & Manufacturing Inc.  
18881 US Highway 31 N  
Westfield, IN 46074

With a copy to:

Peg Carew Toledo  
Mennemeier, Glassman & Stroud  
980 9<sup>th</sup> Street, Suite 1700  
Sacramento, CA 95814

For Englander:

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

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**10. POST-EXECUTION ACTIVITIES**

Englander agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

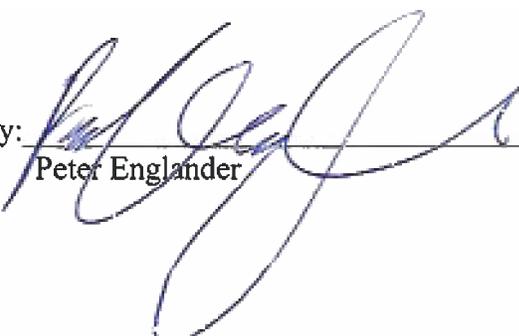
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: January 14, 2013

Date: 1-14-2013

By:   
Peter Englander

By:   
James T. Anthony, President  
Indiana Mills & Manufacturing Inc.