

# PROPOSITION 65 SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Center for Advanced Public Awareness (“**CAPA**”) and Pyramid America Limited Partnership (“**Pyramid America**”), with CAPA and Pyramid America each individually referred to as a “**Party**” and, collectively, the “**Parties**.” CAPA is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Pyramid America is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

### 1.2 Consumer Product Description

CAPA alleges that Pyramid America manufactures, imports, sells, and distributes for sale in California *New Horizons Welcome to Animal Crossing Gift Set, Item: BXM0003, UPC: 6 38211 73519 2* (the “**Products**”), without providing the health hazard warning that CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### 1.3 Notice of Violation

On March 17, 2023, CAPA served Pyramid America, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Pyramid America violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

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

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement is fully executed by all Parties.

### **2. INJUNCTIVE RELIEF: REFORMULATION**

#### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Pyramid America manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

#### **2.2 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as those Products:

(a) containing no more than 0.009% or 90 parts per million ("ppm") Lead in any decoration, description, artwork and/or design on the exterior surface when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6020A or equivalent methodologies utilized by federal or state agencies for the purpose of determining Lead content in a solid substance;

(b) yielding a test result of no more than 1.0 microgram of Lead on any exterior surface covered with a decoration, description, artwork and/or design when sampled pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A; and

(c) yielding a result of non-detect (defined as no more than 25 ppm by weight of Lead) for any decorations located in the upper 20 millimeters of a Product, i.e., the “Lip-and-Rim” area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine Lead content in a solid substance.

If the decoration is tested after it is affixed to the Product, the percentage of the Lead by weight must relate only to the decorating materials and must not include any quantity of Lead attributable to non-decorating material (e.g., [glass or ceramic] substrate).

### **2.3 Customer Notification**

No later than the Effective Date, Pyramid America shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each customer in California to which it supplied Products between March 17, 2022 and March 17, 2023; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Pyramid America supplied between March 17, 2020 and March 17, 2023, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain Lead, a chemical known to the State of California to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must either (1) be returned to Pyramid America for a full refund or (2) have a label, attached to the packaging of each Product before it is sold in the California market or to a customer in California, expressly referring to the Product with the following warning statement:

**⚠WARNING:** This product can expose you to Lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The foregoing warning must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall enclose a shipping label with the return address and

postage paid by Pyramid America. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the forgoing warning statements.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Pyramid America agrees to pay a civil penalty of \$2,500 within five (5) business days of the Effective Date. Pyramid America's civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by CAPA. Pyramid America shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Center for Advanced Public Awareness" in the amount of \$625. CAPA's counsel shall deliver to OEHHA and CAPA their respective portion of the penalty payment.

#### **3.2 Reimbursement of Attorneys' Fees and Costs**

CAPA and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to CAPA's 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 and reporting of this Agreement to the Office of the California Attorney General.

Within five (5) business days of the Effective Date, Pyramid America agrees to issue a check in the amount of \$10,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Pyramid America's attention, negotiating a settlement in the

public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

### **3.3 Payments**

All payments payable and due under this Agreement shall be delivered to CAPA's counsel at following address:

Seven Hills LLP  
Attn: Kimberly Gates Johnson  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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

### **4.1 CAPA's Release of Pyramid America**

This Agreement is a full, final and binding resolution between CAPA, as an individual and *not* on behalf of the public, and Pyramid America, of any violation of Proposition 65 that was or could have been asserted by CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Pyramid America, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Pyramid America directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on their failure to warn under Proposition 65 about alleged exposures to Lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Pyramid America in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, CAPA as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that CAPA 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 exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to Lead in the Products manufactured, distributed, sold and/or offered for sale by Pyramid America, before the Effective Date (collectively, "Claims"), against Pyramid America and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) to upstream entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Pyramid America nor (b) to Releasees who have been instructed by Pyramid America pursuant to Section 2.3, to provide a warning on Products that are not Reformulated Products and have failed to do so. Nothing in this Section affects CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Pyramid America's Products.

#### **4.2 Pyramid America's Release of CAPA**

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

#### **5. SEVERABILITY**

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

#### **6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Pyramid America may provide CAPA with written notice of any asserted change in the law, and shall have no

further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Pyramid America from its obligation to comply with any pertinent state or federal law or regulation.

**7. NOTICE**

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight courier to any Party by the other at the following addresses:

For Pyramid America:

Erol Liguori, President  
Pyramid America Limited Partnership  
209 Riverdale Avenue  
Yonkers, NY 10705

For CAPA:

Kimberly Gates Johnson, Partner  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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.

**8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

This Agreement may be executed in counterparts and by 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.

**9. COMPLIANCE WITH REPORTING REQUIREMENTS**

CAPA and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. 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, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other

agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

**11. MODIFICATION**

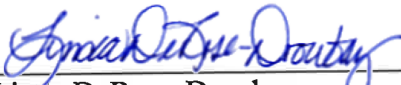
This Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

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

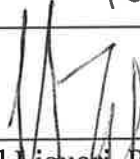
**AGREED TO:**

Date: 10/25/2023

By:   
Linda DeRose-Droubay  
Executive Director  
Center for Advanced Public Awareness

**AGREED TO:**

Date: 10-23-23

By:   
Erol Liguori, President  
Pyramid America Limited Partnership